IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO-COM-14-2022 (O&M)
DECIDED ON:14th JULY, 2022

NEERAJ MITTAL

.....APPELLANT

VERSUS

AMIT MITTAL AND OTHERS

.....RESPONDENTS

AND

FAO-COM-15-2022 (O&M)

VIVEK SAWAL

.....APPELLANT

VERSUS

AMIT MITTAL AND OTHERS

.....RESPONDENTS

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

Present: Mr. Deepak Sabherwal, Advocate
for the appellant (in FAO-COM-14-2022).

Mr. Aman Bahri, Advocate
for the appellant (in FAO-COM-15-2022).

Mr. Puneet Bali, Sr. Advocate with
Mr. S.K.Jain, Advocate for the Caveator.

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SANDEEP MOUDGIL, J

By dint of this common order, we shall dispose of the bunch of two FAOs titled as ***"Neeraj Mittal vs. Amit Mittal and others' and Vivek***

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2023.04.20 13:58
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Sawal vs. Amit Mittal and others" as both these appeals have arisen out of the same impugned order dated 08.04.2022 passed by Additional District Judge, SAS Nagar (Mohali), whereby the application under Order 39 Rules 1 and 2 read with Section151 of CPC, has been allowed and respondent No. 1 (plaintiff) has been permitted to operate the bank account of the defendant No.6- the partnership firm. To avoid any repetition, the facts are being extracted from FAO-COM-14 of 2022 titled as '***Neeraj Mittal Vs. Amit Mittal and others***'.

The appellate jurisdiction of this Court, under the **Commercial Act** by way of instant first appeal, has been invoked to assail the order dated 08.04.2022 passed by Additional District Judge/Commercial Court, SAS Nagar (Mohali) arising out of a suit for declaration against freezing of RARE accounts of the firm M/s Maya Builders-respondent No.6 as illegal, arbitrary and unjust for mandatory injunction with a direction to respondent No.1-HDFC Bank to de-freeze the afore-said account along with suit for permanent injunction to restrain defendants No.4 and 5 namely Neeral Mittal and Vivek Sawal (appellants herein). During the pendency of said suit application under Order 39 Rules 1 and 2 of CPC preferred by the plaintiff-Amit Mittal, partner of M/s Maya Builders-respondent No.1 has been adjudicated vide impugned order dated 08.04.2022 recording the findings as under:-

> *"From all the facts as stated above and documents on the file it comes out that defendant No.6 firm is constructing two real estate projects. The plaintiff has majority of 74% share in the firm while defendant No.4 & 5 have jointly 26% share. The firm was formed in the year 2016 and further partnership deed was executed on 16.12.2017. The projects are nearing completion. As per list 531 customers have invested to purchase the property in*

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2023.04.20 13:58
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two projects and have paid approximately Rs.287 crore to the firm. In these circumstances, if the bank accounts of the firm are frozen, it will cause an irreparable loss financially as well as to the reputation not only of the firm but all the partners and investors. The investors will especially stand to loose their hard earned money. The plaintiff being m ajority share holder is entitled to operate the accounts and to complete the project especially in view of the authority given to him by passing resolution in his favour which are admitted. The argument of learned counsel for the defendants that bank accounts should be operated with joint signatures of the partners is also not sustainable in view of the facts and circumstances as stated above. However, interest of other partners and all the investors are to be protected. The allegations of the defendants regarding misappropriation of fund are matter of evidence. All the transactions in accounts of firm are only by the bank transfers and as per provisions of RERA Act the amount can be withdrawn for specific purpose and fro n retention account withdrawal are to be certified by an engineer, architect and charted accountant. Thus there are sufficient safeguards provided in the Act regarding use of funds received by real estate firm from its customers. The plaintiff as well as defendant no.6 are liable to account for each and every penny received from the customers and plaintiff has already placed on the file majority of the accounts. The grievance of of defendant No.4 and 5 that they had no access to the accounts of the firm, though not proved, needs to be addressed. Therefore, plaintiff can be and is hereby directed to provide amounts to defendant No.4 & 5 may be in the digital form by end of this month and thereafter provide quarterly account statement and other relevant documents to the defendant No.4 & 5 by 15 day of next month. Further to safeguard the interest of all the parties, out of 30% of amount left in the current accounts 50% of the same i.e. 15% of the total amount realized from the custolers will be kept intact in the accounts till the disposal of the case. Though defendant no,5 is also partner of

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2023.04.20 13:58
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> *sister concern Maya Estate and Barnala Builders to which some amounts have been transferred, the plaintiff will be liable to account for of the amounts transferred to these firms or to himself and his relatives and if any amount has been given as loan, same be returned to defendant No.6 firm within reasonable time, preferably within financial year 2022-2023. In case any amount is to be withdrawn from defendant no.6 firm as per terms of partnership deed, the partners will withdraw the same proportionate to their share only."*

The court below allowed the said application and directed defendants No. 1 to 3 (respondents No.2 to 4 in the present appeal) to de-freeze the account with a further direction to defendants No.4 and 5 (appellants herein) not to create any obstruction in the operation of the bank account by the plaintiff-respondent No.1 forcibly and illegally during the pendency of the suit.

It would be apetite to have a glance to the factual matrix in the background, which emerges out from the civil suit that a partnership firm namely "Ms Maya Builders", was originally incorporated in the year 2016 in terms of partnership deed dated 05.11.2016 having four partners namely (1) Amit Mittal, (i) Vivek Sawal, (ii) Mukesh Singla and (iv) Neeraj Mittal, which was involved in constructing two projects at Zirakpur-Patiala National Highway, Nabha Sahib Gurdwara under the name and style "Green Lotus Sakhsham Commercial" (hereinafter referred to as "project No.1"), which is commercial project and another as a residential complex under the name "Green Lotus Sakhsham Residential" (hereinafter referred to as "project No.2"). Both the projects of the said firm are claimed to be registered with RARE bearing registration No. PBRERA-SAS79-PC0122 (Commercial) and PBRERA-SAS80-PR0122 (Residential), which was redrawn in terms of

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2023.04.20 13:58
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partnership deed dated 01.05.2017 on account of desire of Mukesh Singla to retire from the partnership of said firm with the leaving behind the remaining three partners with the profit and loss ratio of 64%, 11% and 25% each. Even this partnership deed was redrawn finally on 16.12.2017, which is alleged to be in existence at present, having three partners namely, Amit Mittal, Vivek Sawal and Neeraj Mittal with profit and loss ratio of 74% 11/ and 15% respectively with the continuance of same very nature of business of Builders, Contractors, Developers; Colonizers; Real Estate Agent under the name and style of M/s Maya Builders.

The firm had opened accounts with defendants No.1, 2 and 3 (respondents No.2 to 4 herein). There are two accounts each with defendant No.2 and 3 (respondents No.3 and 4). Out of these accounts, one is retention account in which 70% of the total amount received is automatically transferred. The two accounts with defendant No.2 and 3 (respondents No.3 and 4) i.e. bearing No. 1916050001441 and 60351496953 are retention accounts whereas the other three are current accounts in which the remaining 30% of the realized amount from the customers is kept.

The powers to operate accounts were given to the plaintiff-respondent No.1 vide resolution dated 22.06.2019. The amount in the retention account can be utilized only for purchase of land in the name of the firm and for making payments to vendors etc. and for other construction expenses as per provisions of Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to be as RERA). As per the RARE norms the total amount which used to be received by the firm M/s Maya Builders from its customers in respect of sale from both the projects used to be deposited in the current account from

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2023.04.20 13:58
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where 70% of the total amount so received automatically used to be transferred by the bank to the RARE account. To meet out the expenses from these two accounts including administrative expenses like payment of salary to the employee, constructions and maintenance of its office and other misc. expenses, the bank accounts were operated through its partners/authorised signatory who was also authorised to do the administrative expenses. The firm through its partners had sold many commercial and residential units and there are total 531 purchasers. The defendant No.6-respondent No.6 (M/s Maya Builders) has already received substantial amount from all the purchasers and projects are near completion. The firm requires to withdraw amount from these accounts for payment to vendors and other expenses. The plaintiff-respondent No.1 is majority share holder and defendant No.6-firm has earned very good reputation in the area. The vendors had been supplying the material on credit basis. The appellant in connivance with defendant No.5 (appellant in FAO-COM-15-2022) with intention to bring bad name to the firm approached defendants No.1, 2 and 3 (respondents No.2 to 4) to freeze its accounts vide letters dated 22.02.2022, 17.02.2022 and 4.03.2022 (Annexures A-6, A-7 and A-8). The bank accordingly froze the accounts and refused to de-freeze the accounts. It was averred by the plaintiff-respondent No.1 that such freezing of firms' accounts is absolutely illegal and arbitrary as well as unjust without even any knowledge of the firm as no such prior notice was served ever to it.

It is on this account the suit came to be filed along-with an application under Order 39 Rules 1 and 2 read with Section 151 of CPC, wherein vide impugned order dated 08.04.2022, it was allowed with a direction to respondent No.1-HDFC Bank to de-freeze the afore-said account along with

SHAM SUNDER
2023.04.20 13:58
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suit for permanent injunction to restrain defendants No.4 and 5 namely Neeraj Mittal and Vivek Sawal (appellants herein). Now against this order dated 08.04.2022 the instant first appeal came to be filed before this Court by defendants No.4 and 5 (Neeraj Mittal and Vivek Sawal).

Learned counsel for the appellant(s) has argued that the plaintiff-respondent No.1 has siphoned huge funds of investor and customers and transferred the same in the accounts of his relatives and other partnership firms and therefore breached the trust and transparency of all other partners denting the basic requisite of mutual trust in a partnership firm. It has been asserted that to safeguard the interest of the investors, the firm needs to comply with the provisions of RERA Act, 2016.

The contention is that there is clear violation of statutory provision of RERA Act, 2016, as the funds so received from the allottees of the real estate project, can be utilized only for the purpose of meeting the cost of construction, land cost and for no other purpose. It is also submitted that the firm is registered under the provisions of RERA Act, 2016 and the plaintiff-respondent No.1 had diverted the funds on its own volition without the concurrence of the appellant(s). It is further the contention of learned counsel for the appellant(s) that the antecedents of plaintiff-respondent No.1 are not clean as is evident from the fact that FIR No. 230, dated 03.05.2022, under Sections 406, 420, 506, 120-B IPC has been registered against the plaintiff-respondent No.1.

Mr. Sabherwal and Mr. Bahri, learned counsel for the appellant(s) concluded the submissions stating that there was no occasion on the part of the plaintiff-respondent No.1 to grant loans to its sister concerns namely, Maya Estate and Barnala Developers apart from the fact that the grant of mandate to

SHAM SUNDER
2023.04.20 13:58
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the Bank is the exclusive right of the partners of the firm and even the Court cannot direct that the mandate be issued in any particular manner or a form and therefore, prayed for accepting the present appeals.

Learned Senior counsel for respondent No.1-plaintiff puts an appearance to assist the court and heavily relies upon the resolution dated 22.06.2019 which bestowed the power to operate the account by him along-with assertion that the amount in the retention account can be utilised only for purchase of land in the name of the firm and for making payments to vendors etc., alongwith other expenses on account of construction as per RERA Act, 2016. It is also his submission that the partners had sold many commercial and residential units to almost 531 purchasers against receipt of substantial amount in the account of the firm. The plaintiff-respondent No.1 also claimed himself to be majority share-holder and averred that he needs to operate the account for payment to various vendors as the material was got on credit basis. For the reasons unknown, the appellants are in connivance with each other got the accounts freezed vide letters dated 22.02.2022, 17.02.2022 and 04.03.2022 causing harm to the reputation of the firm. The progress of the work is also stated to have been brought to a standstill due to the refusal by the respondents No.2 to 4 to de-freeze the account and the order passed by the court of Additional District Judge-Commercial Court dated 08.04.2022 is against the cogent and material evidence on record to show that the resolution dated 22.06.2019 is illegally and arbitrarily overruled . The counsel for respondents No.4 and 5 summed up his submissions with a prayer to dismiss the present appeals terming the order dated 08.04.2022 passed by the trial Court to just and illegal in the light of Section 4 (2) (1) (D) of the RERA Act, 2016 according to

SHAM SUNDER
2023.04.20 13:58
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which the amount from the retention account cannot be used by anyone for the purposes other than construction cost or cost of land that too after getting certified by three professional an engineer, an architect and chartered account.

We have heard learned counsel for the parties and clinically examined the record while convincingly inferring the admitted fact as that the firm is constructing two real estate projects namely "Green Lotus Sakhsham Commercial" and "Green Lotus Sakhsham Residential" with the plaintiff-respondent No.1 having majority share to the tune of 74% whereas, appellants-defendants No.4 and 5 are jointly enjoying 26% of the share. There is no dispute to the fact that firm came into existence in the year 2016 for which a partnership deed was executed on 16.12.2017 and as on date according to the list on record, a total of 531 buyers have already purchased the property for a total amount of Rs.287 crores which came to be deposited in the account of the firm.

There is no dearth in the arguments raised by the appellants particularly on account of no cogent explanation available to controvert the resolution dated 22.06.2019, which empowered the respondent No.1-plaintiff to operate the account and withdraw money from the retention account to meet out the expenses for construction of the project, which is nearing to completion. It is to be borne in mind that in case the construction of project comes to be a standstill which is actually the situation on the ground and there is no denial to it, the firm not only will loose the hard earned money but obviously its name and reputation will be damaged which may result on further into huge business loss in the market apart from loosing goodwill of its buyers. At the same time we are in consonance to the fact that interest of all partners and the investors

SHAM SUNDER
2023.04.20 13:58
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needs to be protected and purpose is to ensure that there is no mis-appropriation of funds. To address this concern of the appellants-defendants No.4 and 5 the trial Court below has very rightly and justifiably adhering to the legal provisions of RERA Act, 2016 particularly in the light of Section 4 (2) (1) (D) of the RERA Act, 2016, directed to the plaintiff-respondent No.1 to provide details of the account in the digital form by end of every quarter along-with material documents by 15th of each month and went ahead to safe guard interest of all the parties also issued a direction that out of 30% of amount left in the current account, 50% of the same i.e. 15% of the total amount realized from the customers will be kept intact in the accounts till the disposal of main suit.

The trial Court has also dealt with argument referred to Clause 17 of the partnership deed in the light of notice issued dated 16.03.2022 which was later to the suit filed on 15.03.2022. It has been ably adjudicated within the all parameters of law pertaining to the arbitration that the appellants has not filed any application under Section 8 of the relevant statute i.e. Arbitration and Conciliation Act (for short 'Act') and above all perusal of the said clause do not bring the instant dispute within the four corners of such nature which can be referred for arbitration. This Court is also oblivious of the fact that even otherwise once no application under Section 8 of the Act has been filed, the proceedings by way of instant suit are maintainable before the civil court.

The learned trial Court has take due caution while issuing further direction to the effect that the plaintiff-respondent No.1 will also be liable to account for all the amounts transferred to other firms-sister concerns of M/s Maya Builders or to himself or to his relatives and if any amount has been given as loan, it should be returned to the account of the firm-defendant

SHAM SUNDER
2023.04.20 13:58
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No.6/respondent No.6 within the financial year 2022-2023. It also restricted the partners for withdrawal of any amount from the account of the firm only proportionate to their share alone.

We are, therefore, completely satisfied with the order dated 08.04.2022 whereby, direction to de-freeze the account has been ordered and the appellants are restrained for creating any hindrance in the operation of the bank account by respondent No.1 during the pendency of suit by illegal means.

Hence, both the instant appeals fails which are ordered to be dismissed with no order as to costs.

However, since the main civil suit is pending before the trial Court, no observation made herein shall have bearing on the merits of the case.

A copy of this order be placed on the file of another connected appeal.

(SANDEEP MOUDGIL)
JUDGE

(AUGUSTINE GEORGE MASIH)
JUDGE

14th JULY, 2022
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Whether speaking/reasoned *Yes/No*
Whether reportable *Yes/No*

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2023.04.20 13:58
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