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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH****CR-4265-2022****Date of Decision: December 19, 2022**

Jyoti Kapoor and another

..... Petitioners

Versus

Rakesh Chander

..... Respondent

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present:- Mr. Amit Jhanji, Sr. Advocate with
Ms. Zaheen Kaur, Advocate for the petitioners.

Mr. Sunil Chadha, Sr. Advocate with
Ms. Kashish Aggarwal, Advocate for the respondent.

HARKESH MANUJA, J. (ORAL)

By way of present revision petition, challenge has been made to an order dated 07.09.2022 (P-10) passed by the Court of Civil Judge (Junior Division), Jalandhar; whereby an application filed at the instance of petitioners/ plaintiffs (hereinafter referred to as 'the petitioners'), for directing the Local Commissioner to visit the premises of respondent in compliance of the previous order dated 01.10.2021 and directing the respondent/ defendant (hereinafter referred to as 'the respondent') to comply with the said by assisting the Local Commissioner, has been declined.

Brief facts of the case are that the petitioners filed a suit for declaration claiming inheritance over 50% share of partnership firm known as '*M/s Romesh Kumar and Bros.*' along with prayer for seeking rendition of accounts and recovery besides, praying for permanent

injunction restraining the respondent from alienating the assets of the partnership firm. It was pleaded in the plaint that '*M/s Romesh Kumar and Bros.*' happened to be a partnership firm consisting of two brothers, namely, Ramesh Kumar and Rakesh Kumar of which Ramesh Kumar was father of the petitioners, who unfortunately expired on 17.11.2020. It was also pleaded that on account of unfortunate demise of Ramesh Kumar, the partnership firm came to an end, thereby creating a cause of action in favour of petitioners for the purpose of filing the present suit.

Along with the suit, the petitioners filed an application with a prayer for appointment of Local Commissioner for examination/valuation of stocks of partnership firm '*M/s Romesh Kumar and Bros.*' and to know account entries as on the date of death of Ramesh Kumar as well as on the date of inspection, besides even for the purpose of receiving the copies of accounts after 01.04.2020 from the respondent. The aforesaid prayer made at the instance of petitioners was allowed by the trial Court vide order dated 01.10.2021. The operative part of the aforesaid order dated 01.10.2021 is reproduced hereunder:-

"In the present suit one of the relief which the plaintiffs have claimed is rendition of the accounts of the above said firm, however, the decision of the present suit will be only possible after taking evidence from both the sides but it is very much important that the stocks/assets of the partnership firm namely M/s Romesh Kumar & Bros. be known at the very on set of this suit so that they cannot be squandered away by any of the partners. In such a case, it is just in this case to appoint Local Commissioner in order to make inventory of all the stocks of the partnership firm namely M/s Romesh Kumar & Bros. Accordingly, Sh.Deepak Moudgil,

Advocate is hereby appointed as Local Commissioner in the present case to visit the premises of M/s Romesh Kumar & Bros. And to inspect all the stocks/ assets and account books of the above said firm and brothers on the date of inspection and also on the date of death of Sh.Ramesh Kumar. The Local Commissioner is also directed to take copy of accounts after 01.04.2020 till the date of inspection and make inventory of all the stocks/ assets along with their valuation of the above said firm. The Local Commissioner shall also note down the last entry in the account books of partnership firm namely M/s Romesh Kumar & Bros on the date of inspection.”

In pursuance to the aforesaid order dated 01.10.2021, the Local Commissioner visited the premises of the partnership firm on 26.10.2021 and submitted his report before the trial Court on 17.11.2021. The operative portion of the report submitted by the Local Commissioner, which is relevant for the purpose of present revision petition, is reproduced as under:-

“I enquired about Sh. Rakesh Chander defendant from Lavna Malhotra wife of Ritesh Malhotra- daughter in law of the defendant Rakesh Chander. She disclosed that Sh. Rakesh Chander is ill and is hospitalized. The undersigned requested Lavna Malhotra that the Hon’ble Court has ordered to inspect all the stocks/ assets and account books of the firm and to take copy of the Accounts of the firm after 01.04.2020 till today and to make inventory of all stocks/ assets along with their valuation. However, Lavna Malhotra disclosed that the said documents are under control and possession of her father-in-law i.e. defendant. The undersigned also requested the persons present at the spot that as per the orders of the court the undersigned is required to

make the inventory of all stocks/ assets along with valuations. The persons who signed the presence sheet agreed for the same, while Lavna Malhotra and the persons who refused to sign the presence sheet did not allow the undersigned to make inventory of all stocks/ assets along with their valuations. The flour (sic flour) mill was operational during the time the undersigned remained at the spot. Photographs were taken at the spot which are annexed herewith. As such, the undersigned was left with no other option and came back from the spot.”

Faced with the aforesaid, the petitioners moved an application before the trial Court with a prayer for issuance of direction to the Local Commissioner to visit the spot again so as to render complete effect to order dated 01.10.2021.

The aforesaid application was strongly opposed at the instance of respondent and even reply to the same was also filed. The stand taken in the reply was that the accounts of the partnership firm as on the date of death of Ramesh Kumar already stands provided to the petitioners by handing over to them the copies of balance sheet and other supporting documents. It was also stated that the Local Commissioner was provided with all necessary assistance in furtherance of the compliance of order dated 01.10.2021 and as such nothing remained to be complied with at this stage.

Trial Court vide order dated 07.09.2022 dismissed the application filed at the instance of petitioners thereby declining the prayer made therein. It is the aforesaid order dated 07.09.2022 which has been impugned by way of present revision petition.

Learned Senior counsel appearing on behalf of the petitioners submits that once the Local Commissioner was appointed by the trial Court so as to inspect all the stocks/ assets and the account books of the firm, besides taking copies of accounts after 01.04.2020 till the date of inspection as well as making inventory of all stocks/ assets, the non-cooperation on the part of respondent could not be permitted to nullify the effect of the previous order dated 01.10.2021 and as such the trial Court went wrong while declining the prayer made in the subsequent application.

On the other hand, learned Senior counsel appearing on behalf of the respondent submits that the appointment of Local Commissioner was ordered by the trial Court vide an ex-parte order dated 01.10.2021 without affording the respondent any opportunity to contest the prayer made at the instance of petitioners in this regard. Relying upon his reply to the application dated 07.12.2021, learned Senior counsel submits that accounts of the partnership firm as on the date of death of Ramesh Kumar already stood supplied to the petitioners while handing over to them the copies of the balance sheet and other supporting documents and as such no further compliance of the previous order dated 01.10.2021 was made out except for the malafide intention of the petitioners so as to stall the working for the new partnership firm. Learned senior counsel also relies upon the orders passed by coordinate Benches of this Court in CR-3128-2015, titled as **Smt.Raksha Devi Vs. Madan Lal and others**, decided on 02.02.2017, CR-4815-2016, titled as **Hari Singh Vs. Baljeet Singh and**

others, decided on 23.02.2017, CR-5705-2017, titled as **Smt. Geeta Devi Vs. Vinod Kumar and others**, reported as 2017 SCC Online P&H 2887 and CR-1030-2020, titled as **Deva Singh Vs. Mohinder Singh and others**, decided on 06.04.2022, so as to question the maintainability of the revision petition itself.

I have heard learned counsel for the parties and gone through the paper-book and find substance in the arguments advanced by learned Senior counsel for the petitioners.

The dispute in the present case relates to the right sought to be enforced at the instance of petitioners having inherited by their deceased father in the partnership firm, namely, '*M/s Romesh Kumar and Bros.*' In the suit, the petitioners are seeking rendition of accounts as well as for decree of recovery besides praying for grant of permanent injunction. Once the existence of partnership firm has not been disputed, besides not even questioning the relationship of the petitioners with deceased Ramesh Kumar, in my considered view, appointment of Local Commissioner at the instance of trial Court vide its order dated 01.10.2021, *inter-alia*, for the following purpose:-

- (i) *To inspect all the stocks/ assets and account books of the above said firm and brother on the date of inspection and also on the date of death of Ramesh Kumar;*
- (ii) *To take copies of accounts from 01.04.2020 till the date of inspection;*
- (iii) *To make inventory of all the stocks/ assets along with their valuation of the above said firm; and*
- (iv) *To note down the last entry in the account books of the partnership firm 'M/s Romesh Kumar and Bros.' as on the date of inspection,*

was done, completely, in the interest of justice and to even help the Court itself to decide the rights of the parties in a complete and effective manner.

A complete and comprehensive perusal of the report dated 26.10.2021, submitted by the Local Commissioner shows that the respondent being unwell was not present at the spot and as such could not make available the necessary records to the Local Commissioner, thereby compelling the petitioners to move another application dated 01.12.2021.

In my view, the trial Court while passing the impugned order even failed to exercise the jurisdiction vested in it. Considering the facts and circumstances of the case in hand, once Local Commissioner was appointed so as to enable the Court itself to decide the rights of parties completely and effectively, the said order could not have been permitted to be nullified on account of non-effectiveness or inaction on the part of the respondent and affirmed by trial Court having merely recorded that the conduct of non-cooperation of the respondent shall be considered at the time of recording of evidence. The trial Court could not have remained merely as a spectator; but rather would have taken necessary steps towards effective compliance of its previous order dated 01.10.2021, besides even by requesting the respondent to provide necessary records to the Local Commissioner, unless the same was prima facie proved to be non-existence/ not available.

The trial Court even went wrong while recording that the entitlement of the petitioners as regards rendition of accounts was still

to be adjudicated upon. The aforesaid observation appears to be even against the case set up by the parties in their respective pleadings. Once the relationship of petitioners with deceased Ramesh Kumar coupled with the fact that he happened to be the partner of the aforesaid firm, namely, '*M/s Romesh Kumar and Bros.*' to the extent of 50% was not disputed, even a prima facie expression of opinion questioning the entitlement of petitioners about their right to pray for rendition of accounts could not have been made so as to reject the prayer regarding re-visit of the Local Commissioner. Once having appointed and assigned a duty, the Local Commissioner was acting on behalf of the Court itself and thus, the respondent was required to render all possible assistance to the Commissioner so that it could function smoothly in discharge of its duties independently. In fact, faced with the conduct of respondent, the trial Court was required to issue directions to the respondent as well as the Local Commissioner so as to comply with the mandate of its previous order dated 01.10.2021 in exercise of its powers under sub-rule (3) to Rule 10 of Order 26 CPC.

As regards the order dated 01.10.2021 having been passed ex-parte without issuance of notice to the respondent, it may be pointed out here that even as on today, no challenge has been made to it at the instance of respondent, either before the trial Court itself or even before this Court despite expiry of more than one year of its passing.

Still further, in my view, order dated 01.10.2021 was passed by the trial Court so as to do substantial justice between the parties without causing any hindrance or disturbance in the business being

carried out by the respondent and even to enable itself to decide the rights of the parties completely and effectively. The objection raised at the instance of respondent as regards maintainability of the present revision petition based on the judgments relied upon by learned Senior counsel, does not appear to be having much substance as the order impugned herein is not pertaining to the appointment of Local Commissioner; but merely relates to its enforcement; regarding which, in fact it is the trial Court which has failed to exercise the jurisdiction vested in it while declining the said prayer.

In view of the discussion made hereinabove, the revision petition is allowed. Impugned order dated 07.09.2022 is hereby set aside with a request to the trial Court to issue necessary directions to the Local Commissioner for compliance of its previous order dated 01.10.2021 with a slight modification to the effect that the inspection of the stocks/ assets, account book, taking of copies of the accounts from 01.04.2020 as well as record relating to inventory of all the stocks/ assets as well as their valuation shall be permitted to be done only upto the date of death of Ramesh Kumar i.e. 17.11.2020

December 19, 2022
sanjay

(HARKESH MANUJA)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>