

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR NO.5263/2022(O&M)

Date of decision:17/11/2022

M/S STARCREST SERVICES PVT LTD

.....Petitioner

Vs.

Dr. SANJEEV ARORA AND ORS

.....Respondent

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr.Kunal Dawar, Advocate for the petitioner.

Nidhi Gupta,J.

This revision petition has been filed seeking a direction to the Civil Judge (Senior Division) Faridabad to expeditiously dispose of/decide the application dated 23.3.2021 (Annexure P-3) filed by the petitioner herein under Order 1 Rule 10 read with Section 151 CPC for being impleaded as necessary party in Civil Suit No. 656/2021 titled as 'Dr. Sanjeev Arora Vs. Mr. Nitin Gupta & others' pending in the said Court.

Learned counsel for the petitioner has submitted that the petitioner company is engaged in the business of Facilities Management and Security Services and is a GST registered company with GST No. 06AASCS5042F1Z8. Director of the Company Major (Retd.) Sanjay Singh Tanwar, is a Shaurya Chakra Awardee and most of its employees

are ex-servicemen and war widows, etc. who are employed in providing services like facilities management and security etc.

On the complaint of the petitioner company an FIR No. 21 (Annexure P-1) dated 04.02.2021, under Section 406, 420, 467, 468, 471, 120-B of the IPC at Police Station Sector 53, Gurugram was registered with allegations that the petitioner company had transferred a sum of ₹18,68,85,294/- in the bank accounts of Harish Kumar Rampal its Chartered Accountant and his associate, Ms. Pooja Sablok, for the purposes of depositing GST to the Govt. for the period July, 2017, till December 2020. But when in the month of January, 2021 the officers of the GST Department visited the company premises, it was discovered that Harish Kumar Rampal, Chartered Accountant had siphoned-off an amount of over ₹14 crore by depositing lesser amount with the Govt. than due although collected from the petitioner M/s Starcrest Services Pvt Ltd.

Out of ₹14 crore which was fraudulently siphoned off, part of the amount of ₹5.16 Cr. was used to make an advance payment towards purchasing a part of the property bearing No. IG-45 NIT, Faridabad under agreement to sell dated 12.10.2019.

Respondent no. 1/Plaintiff filed a Civil Suit (Annexure P-2) on 27.02.2021 for declaration under S.27 of Specific relief Act for recession of agreement to sell dated 12.10.2019 in which Harish Kumar Rampal was made Defendant no. 2. In Para 6 of Suit at page 35 Respondent no. 1/plaintiff admitted that Rs. 4.71 crores was received from Harish Kumar Rampal account (Chartered Accountant of the Petitioner company). Further in Para 15 Plaintiff states he wants to cancel the agreement and return the money to Bank accounts from where

he had received it; and further states that he is aware that defendant No. 2 is in judicial custody pursuant to the FIR.

Petitioner company is a necessary party due to the fact that amount used for the agreement to sell belonged to it and had to be deposited with GST department. Though GST department and EOW were made Defendants.

Accordingly, Petitioner filed an application under Order 1 Rule 10 read with S.151 CPC (Annexure P-3) on 23.03.2021 for impleading the Petitioner/Applicant on the ground that it was necessary party as the Plaintiff has admitted having received funds from Harish Kumar Rampal which actually belongs to Petitioner and was to be deposited as GST.

After registration of the above-mentioned FIR no. 21 dated 4.2.2021 by the petitioner, Harish Kumar Rampal approached this Court for grant of Regular Bail vide CRM-M 29662 of 2021. During its pendency he filed an Application (Annexure P-4) showing willingness to repay and settle the matter by disposing off various assets and investments including the investment of Rs. 5.16 Crores in respect of which civil suit was pending. Harish Kumar Rampal was granted Interim Bail vide order dated 27.08.2021 (Annexure P-5) by this Court for showing his bonafide in paying the due amount back to the Petitioner company.

Further Harish Kumar Rampal filed Written Statement (Annexure P-6) admitting that amount of Rs 5.16 Crores paid by him to the Plaintiff/Respondent no. 1, was actually meant to be paid to the GST department. (Relevant Para I and II at pg. 62 and 63). Harish Kumar Rampal moved an Application (Annexure P-7) under Order 39 Rule 10

CPC in the said Civil Suit that the amount of Rs. 5.16 Crores be deposited with the GST Department under the GST no. of the Petitioner company as the said amount was received by him from the Petitioner company for payment of GST dues hence, the same be released to the GST department. However, in meanwhile Harish Rampal died on 22.09.2021.

It is submitted that the delay in impleading of Petitioner as party to the Civil Suit is causing serious prejudice to its very survivability. In the meantime, the interest towards outstanding dues is mounting upon the Petitioner company. The application has been pending for the last 20 months, and till the time the Petitioner is impleaded, he cannot make any prayer in the said Civil Suit regarding the huge amount which admittedly has been embezzled from him to be deposited in GST Department which is also a party in the Civil Suit.

Ld. Counsel for the petitioner submits that at this stage he will be satisfied if the matter is disposed of with a direction to the Ld. Civil Judge, Sr. Division, Faridabad to expeditiously decide Application dated 23.02,2021 (P-3 at 43) filed by Petitioner for being impleaded as a necessary party in CS no. 656 of 2021. Next date of the trial court hearing is stated to be 22.11.2022.

Heard learned counsel for the petitioner and perused the paper book carefully.

A perusal of the zimni orders shows that the application in question under Order 1 Rule 10 CPC was filed on 23.3.2021; and thereafter, on 1.10.2021 the petitioner had even filed an application for preponement, however each time matter is adjourned on one pretext or

the other without any decision thereupon. Resultantly, it has been pending for almost two years.

Keeping in view the facts, noticed above, and the limited prayer made on behalf of the petitioner and the fact that the application in question is pending for almost two years, the present revision petition is allowed and learned Civil Judge (Senior Division), Faridabad is directed to dispose of the application filed by the petitioner under Order 1 Rule 10 CPC in Civil Suit No. 656/2021 titled as ‘Dr. Sanjeev Arora Vs. Mr. Nitin Gupta & others’ pending in his Court, expeditiously but not later than January 31, 2023.

17.11.2022
Joshi

(Nidhi Gupta)
Judge

Whether speaking/reasoned
Whether reportable

Yes
Yes/No