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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR-4225-2018(O&M)
Date of decision: March 22, 2023

M/s Sepal Hotels Private Limited

….Petitioner

versus

Punjab Financial Corporation

….Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present:- Mr. Rajan Bansal, Advocate for petitioner.

Mr. Arshdeep Singh, Advocate for respondent.

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ARUN MONGA, J. (ORAL)

Revision petition herein is to set aside impugned order dated 07.04.2018(Annexure P-17) passed by learned Civil Judge (Senior Division), Bathinda whereby application under Order VI Rule 17 read with Section 151 of Code of Civil Procedure, 1908 (for short 'CPC')filed by respondent-defendant for amendment in prayer clause of the reply to the application for final decree was allowed, thereby adding a prayer that "*if, after rendition of accounts, any amount is found due and payable by the plaintiff-applicant Sepal Hotel, the decree for recovery of said amount may be passed in favour of the defendant-respondent with costs and interest as per preliminary decree.*"

2. Pleaded case of plaintiff-Company is that plaintiff-Company filed a Civil Suit against respondent-defendant/Corporation claiming rendition of accounts as per various terms claimed/ proposed by it. Preliminary decree for rendition of accounts was passed for rendition of accounts of petitioner maintained by respondent on the basis of mortgage deed dated 18.01.1977. Aggrieved, respondent-defendant filed an appeal. Plaintiff also filed a separate appeal seeking straightway a money decree against defendant instead of preliminary decree. Vide appellate order dated 09.01.2014 (Annexure P-3), preliminary decree was affirmed.

2.1. Respondent approached this Court by way of RSA-4179-2014, which was dismissed as withdrawn on 15.01.2016 vide Annexure P-5 stating that matter was settled between parties. An application for recalling of said order was also filed by respondent, which was allowed on 10.03.2016 vide Annexure P-6, but appeal remained dismissed as withdrawn.

2.2. Vide order dated 21.11.1989, respondent was directed to revise accounts after granting due rebates and interest. Said order was challenged by respondent by way of FAO-125-1990, which was dismissed vide order dated 04.12.2008 (Annexure P-7).SLP was also dismissed vide order dated 03.08.2009 (Annexure P-8). Vide order dated 10.08.2009 (Annexure P-9), learned Additional District Judge, Bathinda concluded process of rendition of accounts and determined that excess payment of Rs.1,11,402/- had been made by petitioner to respondent. Respondent challenged said order by way of FAO-120-2010, which was dismissed vide judgment dated 30.04.2010 (Annexure P-11). SLP was also dismissed vide order dated 17.09.2010 (Annexure P-12). Petitioner filed an application for passing final decree in furtherance of preliminary decree dated 31.05.2011. Thereafter, respondent filed an application under Order VI Rule 17 read with Section 151 for permission to amend prayer clause of reply, which was allowed by learned trial Court vide impugned order dated 07.04.2018 (Annexure P-17). Hence, present revision petition.

3. I have heard learned counsel for parties and perused the record.

4. Having heard arguments, I am of the opinion that revision petition deserves to be allowed. Sustaining the impugned order would necessarily amount to permitting respondent-Corporation to raise a counter claim, right of which otherwise stood foreclosed by their having not preferred the same at the relevant time when they filed their defence statement to the suit for rendition of account filed by petitioner herein. That apart, it appears that even otherwise, amendment sought is only with respect to prayer whereby the respondents seek to make further recoveries from petitioner even after the preliminary decree in favour of the petitioner for rendition of

accounts attained finality. Further, an order dated 10.08.2009 (Annexure P-9) was passed by learned Additional District Judge holding that the petitioner had made excess payment of Rs.1,11,402/-, and dismissed application under Section 31 of the State Financial Corporation Act, 1951 filed by the respondent-Corporation. Either way to grant such a relief the passing of said order dated 10.08.2009 (Annexure P-9) and after finality of the preliminary decree by permitting an open-ended right in favour of respondent to recover money from the petitioner would result in defeating the very purpose of preliminary decree for rendition of accounts passed by the trial Court and affirmed by the appellate Court as also the orders dated 10.08.2009 (Annexure P-9) passed by learned Additional District Judge.

4.1 There is another aspect of the matter, i.e. limitation. On *prima facie* perusal, it appears that recoveries, if permitted, can only be made within a period of 3 years of right having crystallized in favour of Corporation, and to permit such a right to remain alive for perpetuity would defeat very concept of law of limitation.

5. In totality of circumstances, impugned order is hold not sustainable and is accordingly, set aside. Application filed by respondent-Corporation to seek amendment of reply is thus, dismissed.

6. Revision petition is allowed in above terms.

7. Pending civil miscellaneous application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

March 22, 2023
mahavir
Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No