

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

137

RSA-1026-2020(O&M)
Date of Decision:08.11.2023

M/s Sanjeev Woolen Mill and others

....Appellants

Versus

Indian Overseas Bank and others

....Respondents

CORAM:HON'BLE MR. JUSTICE SANJAY VASHISTH

Present: Mr. Ashwarya Bajaj, Advocate
for the appellants.

SANJAY VASHISTH, J.(Oral)

1. Present regular second appeal has been filed by the appellants/defendants No.1,2 and 3 by impleading respondent No.4 as perma respondent, against the concurrent findings of decreetal of civil suit, whereby, same has been disposed of with the observation that the question pertaining to the entitlement to receive the custody of three title deeds would be decided only as per the entitlement of the four partners/co-partners of the dissolved firm to receive their respective shares in the assets of the Firm.

Till such time as prayed in the civil suit by the Bank as plaintiff, title deeds were ordered to be preserved in safe and independent custody to be delivered to the persons as per the

finalizing of proceedings of rendition of accounts of the dissolved firm.

2. Indian Overseas Bank being plaintiff instituted the suit against the firm i.e. defendant No.1-M/s Sanjeev Woolen Mills and also impleaded its four partners as defendants No. 2 to 5. The title deeds and lease deeds were lying with the Bank as collateral security to the loan amount availed by defendant No.1-M/s Sanjeev Woolen Mills and its sister concern M/s Monika India. There is no dispute regarding the payment of loan amount by the defendants or even the firm, rather for the purpose of releasing the documents i.e. title deeds and lease deeds, suit was instituted by the plaintiff-Bank as inter pleader suit, wherein, the interest of the defendants was involved in relation to the documents in question.

3. Mr. Ashwarya Bajaj, learned counsel for the appellants/defendants No. 1 to 3 submits that as per major share in the Firm, though already dissolved, defendants No.1 to 3 are entitled to receive the custody of the documents in question. He further submits that in civil suit no.484 of 08.11.1993, which was filed for the purpose of dissolution of the firm M/s Sanjeev Woolen Mills and rendition of account, learned Civil Court has given its findings that defendant No.5 Hira Lal Goyal is entitled for 13 % share, defendant No.2- S.P. Goyal is entitled for 40 % of share, defendant No.3-Sanjeev Goyal is entitled for 24 % share and defendant No.4 is entitled for 23% of the share, therefore, submits that major share to the extent of 87% is with

the appellants, thus, they are entitled to retain the custody of the documents. In other words, appellants objects the retaining of the custody of the said documents by the Bank.

4. While addressing submissions before this Court, Mr. Bajaj, learned counsel for the appellants No. 1 to 3 submits that undoubtedly, first appeal and then regular second appeal against the finding given in Civil Suit No.484 of 1993 has been affirmed upto Hon'ble High Court (Punjab and Haryana High Court), but same is yet to be finalized because said finding has been assailed by way of SLP (c) No.004080 of 2023 before Hon'ble Apex Court.

5. I have considered the submissions made by learned counsel for the appellants and the findings given by the learned Courts below.

6. The argument that appellants possess 87% share, which is major part of the total share of the Firm, is not of any consequence for deciding the issue raised by the plaintiff-Bank. Undoubtedly, Bank was compelled to file the civil suit because of the reason that the Firm had dissolved by the time of discharging of the loan amount, therefore, it does not carry any rationale in issuing direction that the documents in question be handed over to the appellants only for the reason that they are having 87% of the share in the Firm, doing so, may multiply the litigation amongst the parties and that too with the reason that the Bank is left with no purpose, to get involved in the litigations of the private persons/parties. It is also admitted by the

appellants that the finding of fact has already been given by the Civil Court and same has been affirmed upto Hon'ble High Court (Punjab and Haryana High Court).

7. For the sake of convenience, findings recorded by learned Lower Appellate Court in paragraphs No. 17, 18, 19, 20 ,21, 22, 23, 24 and 25 are as under:

'17. Admittedly, a suit claiming dissolution of the firm M/s Sanjeev Woolen Mills and for rendition of accounts thereof was filed by defendant no.5-Hira Lal Goyal being Karta of HUF registered in the Court of learned Civil Judge (Junior Division), Ludhiana as Civil Suit No.484 of 08.11.1993. Certain other reliefs were also claimed in the said civil suit, which was decided vide judgment and decree dated 31.07.2014 passed by the court of Sh. Ajay Pal Singh, learned Civil Judge (Junior Division), Ludhiana and the suit filed by the plaintiff Hira Lal Goyal was decreed partly and a preliminary decree was passed in favour of the Hira Lal Goyal and against defendants (in that suit) to the effect that firm M/s Sanjeev Woolen Mills stood dissolved w.e.f. 12.05.1993. The share of Hira Lal Goyal, S.P.Goyal, Sanjeev Goyal and Rakesh Goyal was declared to be 13%, 40%, 24% and 23% respectively. The copy of judgment dated 31.07.2014 is Mark AX on the file. Defendants no.1 to 3 i.e. S.P.Goyal, Sanjeev Goyal and Rakesh Goyal were also held liable to render the accounts of the firm till 12.05.1993 in respect of all the assets belonging to the firm including that mentioned in the document Ex.P.1 (in that suit), within three months of the passing of that judgment.

18. Admittedly against the judgment and decree dated 31.07.2014, three Civil Appeals titled as S.P. Goyal and others versus H.L. Goyal and others' bearing CIS No.CA-896 of 2014, Civil Appeal titled as 'H.L. Goyal versus S.P. Goyal and others' bearing CIS No. CA-899 of 2014 and Civil Appeal titled as 'M/s Home Concepts versus H.L. Goyal and others' bearing CIS No.CA 916 of 2014 were filed and same have been

decided by this court vide judgment dated 28.01.2019.

19. During the arguments, both the parties have stated to have preferred appeals against the judgment and decree dated 28.01.2019 passed by this Court before the Hon'ble Punjab and Haryana High Court at Chandigarh. Thus, the subject matter involved in civil suit no.484 dated 08.11.1993 has not attained finality and same is now pending before the Hon'ble Punjab and Haryana High Court vide appeals filed by both the parties against the judgment and decree dated 28.01.2019 passed by this court.

20. Since the dispute regarding dissolution of the firm M/s Sanjeev Woolen Mills and rendition of accounts thereof is still pending, it cannot be said as to which of the partner thereof is entitled to the property/properties thereof. Unless the matter regarding dissolution of the firm and rendition of accounts is finally settled, only thereafter the entitlement of the properties thereof shall be decided. Certainly the lease deeds or the sale deed in question are the entitlement of the party to whom the property is allotted in those proceedings. Accordingly the learned Trial Court has not committed any illegality by observing that neither defendants no.2 to 4 nor defendant no.5 is entitled to receive the original title deeds in question at this stage and custody thereof would be delivered as per the finalizing of rendition of accounts of the dissolved firm, in pursuance of judgment dated 31.07.2014 or as per any further final out come of the civil suit no.484 of 08.11.1993.

21. The first contention on behalf of the appellant is that the suit filed by the plaintiff bank is time barred. The attention of this court was drawn towards Section 3 and 9 of Limitation ActIt was submitted that even if the plea of suit being barred by limitation is not set up in the plaint, the court is bound to dismiss the suit, if the same is barred by limitation. The liabilities of the plaintiff bank were discharged in the year 1996-97 and even as per the averments made in plaint cause of action firstly arose to the plaintiff bank on 10.07.2000. Once the cause of action arose to the plaintiff bank to file the suit, the period of three years for filing present suit started and it does not stop under Section 9 of Limitation ActIt was

further contended that the alleged letter dated 10.07.2000 written by defendant no.5 is ante-dated and has been procured by the plaintiff from defendant no.5 to defeat the claim of the appellants.

22. This Court however, finds no merit in the submissions of the appellant. The plaintiff bank by filing the instant suit has not sought recovery of any amount or other thing from the defendants. The present suit is an inter-pleader suit and till the original documents are in possession of the plaintiff bank, the plaintiff bank has cause of action to file the present suit. It is not disputed that at the time of institution of the suit, the original lease deeds and sale deed were lying in the custody of the plaintiff bank and accordingly the present suit cannot be held barred by limitation.

23. The second contention on behalf of the appellants is that the share of Hira Lal Goyal-defendant no.5 is merely 13%, whereas the remaining 87% share belong to appellants and performa respondent and this fact entitles the appellants to the custody of the documents from the plaintiff bank. Even at the time of institution of the suit only appellants were the partners of the firm M/s Sanjeev Woolen Mills. This contention is again devoid of any merit because admittedly at one point of time defendant no.5-Hira Lal Goyal was partner of firm M/s Sanjeev Woolen Mills and unless and until the matter regarding dissolution of the firm and rendition of accounts is finally settled the entitlement of the properties thereof cannot be determined. Certainly the lease deeds or the sale deed in question are the entitlement of the party to whom the property is allotted in those proceedings. Accordingly, only by the reason that defendant no.5-Hira Lal Goyal has only 13% share in the firm M/s Sanjeev Woolen Mills, the appellants alone cannot be held entitled to the documents involved herein.

24. On behalf of the appellants it is submitted that defendant no.5 has retired from the partnership concern and cannot be held entitled to the custody of original title deeds. This contention is again devoid of any merit as the same is subject matter of Civil Suit No.484 dated 08.11.1993.

25. On behalf of the appellants it was submitted that the delivery of documents to the appellants would not prejudice the right of the defendant no.5, whereas the non-

delivery thereof to the appellants will create difficulties to the appellants in dealing with the properties and as such it would be in the interests of justice that the custody of documents is handed over to the appellants. This contention is again devoid of any merit as the properties of M/s Sanjeev Woolen Mills are the subject matter of Civil Suit No.484 dated 08.11.1993 and only after the final decision of the same, the entitlement to the custody of documents shall be determined.'

8. I do not find any substantive reason to disturb the findings given by learned Courts below, no question of law much less substantial question of law arises in the instant appeal for the consideration of this Court. Consequently, the impugned judgments and decree passed by both the Courts below are hereby maintained and the present appeal stands dismissed.

November 08, 2023
rashmi

[SANJAY VASHISTH]
JUDGE

Whether speaking/reasoned	yes/no
Whether reportable?	yes/no