2024:PHHC: 055141

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

138 CR-2428-2024 (O&M)
Date of decision: 23.04.2024

Harpreet Industries

...Petitioner

Versus

M/s Mita India Pvt. Ltd. and others

...Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS SURI

Present: Mr. Sumeet Mahajan, Sr. Advocate with
Ms. Rabani Attri, Advocate and
Mr. Saksham Mahajan, Advocate for the petitioner.

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VIKAS SURI, J.

1. This revision petition has been filed by the petitioner-decree holder invoking jurisdiction under Article 227 of the Constitution of India, *inter alia*, seeking issuance of a direction to learned Civil Judge (Jr. Divn.), Ludhiana/Executing Court to decide the application dated 19.02.2024 (Annexure P-8) filed by the petitioner for releasing the bank guarantee dated 23.05.2019, deposited by respondent No.1-JD.

2. Learned Senior counsel for the petitioner submits that the suit filed by the petitioner against respondent No.1 for recovery of Rs.42,73,984/- along with interest was decreed by the trial Court vide judgment and decree dated 05.01.2018, whereby the petitioner-plaintiff was held entitled to recover the aforesaid amount along with interest @ 9% p.a., from the date of filing of the suit till passing of the decree and further interest @ 6% p.a., from the date of the judgment and decree till its realization. Respondent No.1-JD aggrieved by the aforesaid judgment

and decree preferred an appeal thereagainst. Vide order dated 15.05.2019 (Annexure P-2), the first Appellate Court considering the application seeking stay of operation of impugned judgment and decree, while taking into consideration that the impugned decree was a money decree, passed a conditional order securing the rights of the decree holder to ensure and guarantee the payment that may be there as a final outcome of the appeal and the right which had already accrued by virtue of the afore-noticed decree. The Court ordered stay of operation of the impugned judgment and decree subject to the JD (respondent No.1 herein) furnishing bank guarantee before the executing Court to the tune of Rs.45 lakh, which was to include the interest component that may accrue on the decreetal amount. Respondent No.1-JD in terms of the aforesaid conditional stay order furnished the bank guarantee dated 23.05.2019. Learned counsel would also submit that the said bank guarantee was renewed during the pendency of the appeal and the new claim date recorded therein is 24.05.2024. The aforesaid appeal was dismissed vide judgment and decree dated 24.08.2023 (Annexure P-5). On 19.02.2024, the petitioner-DH moved an application (Annexure P-8) for invoking the bank guarantee, so that it may not lapse. The executing Court issued notice to the JDs for 26.02.2024. Reply to the said application was filed by respondent No.1-JD on 26.02.2024, whereas respondent No.7-Bank (respondent No.2, herein) made a statement that it does not want to file reply to the application for invoking the bank guarantee. The execution proceedings were deferred to 18.03.2024 for filing reply by the JD Nos.2 to 6. On the adjourned date, no reply was filed on behalf of JD No.2, whereas JD Nos.3 to 6 having failed to put in appearance, were proceeded against *ex parte* and the proceedings were deferred to 05.04.2024 for consideration. However, the case was taken up on 04.04.2024 as the learned Presiding Officer was to proceed on casual leave on the date fixed and the proceedings were further deferred to 24.04.2024.

3. Mr. Sumeet Mahajan, learned Senior counsel has emphatically contended that the petitioner-DH had approached the executing Court on 19.02.2024 seeking invocation of the bank guarantee, the revised claim date of which is to end on 24.05.2024. In the given facts and circumstances, the petitioner is apprehensive that the decree holder would make every endeavour to seek further adjournment so as to frustrate invocation of the bank guarantee. Learned counsel in the aforesaid premise, prays that a direction be issued to the learned Civil Judge (Jr. Divn.), Ludhiana/executing Court to dispose of the aforesaid application seeking invocation of the bank guarantee.

4. Heard learned counsel for the petitioner and with his able assistance perused the material appended with the revision petition.

5. A perusal of the record shows that the suit for recovery for Rs.42,73,984/- along with interest stands decreed in favour of the petitioner-DH and against respondent No.1-JD vide judgment and decree dated 05.01.2018 (Annexure P-1). On an appeal being carried to the first Appellate Court, in order to balance the equities while securing the interest of the decree holder vide order dated 15.05.2019 (Annexure P-2), operation of the impugned judgment and decree passed by the trial

Court was stayed, subject to the JD furnishing a bank guarantee before the learned executing Court. It is also evident from the record that the aforesaid first appeal has been dismissed vide judgment and decree dated 24.08.2023 (Annexure P-5). It is not disputed that in compliance to order dated 15.05.2019 passed by the first Appellate Court, the JD had filed the requisite bank guarantee for a sum of Rs.45 lakh, which was subsequently renewed.

6. In the background of the aforesaid, without going into the merits of the case or expressing any opinion on the contentions raised by learned counsel for the petitioner, this Court deems it appropriate to dispose of this revision petition with a direction to the executing Court to adjudicate upon the application dated 19.02.2024 (Annexure P-8) for invoking the bank guarantee, in accordance with law, on the date fixed or within a fortnight thereafter, so that the petitioner may not be prejudiced by the delay.

7. The revision petition is disposed of in the aforesaid terms.

(VIKAS SURI)
JUDGE

April 23, 2024
sumit.k

Whether speaking/reasoned : Yes / No
Whether Reportable : Yes / No