



In the High Court of Punjab and Haryana at Chandigarh

Date of Decision: 05.09.2024
CR No.3703 of 2024(O&M)

1.

Mahender SinghPetitioner

Versus

Parkash and othersRespondents

Present: Mr. R.N. Lohan, Advocate and
Ms. Neha Rana, Advocate for the petitioner.

Mr. Anmol Rattan Singh Sidhu, Senior Advocate with
Mr. Kanishk Sarup, Advocate for respondents No.1 and 2.

Mr. Rao Ajender Singh, Advocate for respondent No.3.

2.

CR No.1549 of 2024(O&M)

Parkash and anotherPetitioners

Versus

Mahender Singh and anotherRespondents

Present: Mr. Anmol Rattan Singh Sidhu, Senior Advocate with
Mr. Kanishk Sarup, Advocate for the petitioners.

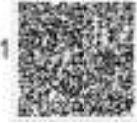
Mr. R.N. Lohan, Advocate and
Ms. Neha Rana, Advocate for respondent No.1.

Mr. Rao Ajender Singh, Advocate for respondent No.2.

CORAM: HON'BLE MRS. JUSTICE RITU TAGORE

RITU TAGORE, J.

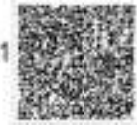
1. By this common order, above captioned revision petitions arising from the same order dated 31.01.2024 (Annexure P-1 in CR No.1549 of 2024 and Annexure P-5 in CR No.3703 of 2024) passed in Civil Miscellaneous Appeal No.82 of 2023 and Civil Miscellaneous Appeal No.88



of 2023, involving similar facts and issues, shall be disposed of. Additionally, Civil Revision No.1549 of 2024, challenging the order dated 14.07.2023 (Annexure P-10) shall also be disposed of along with this order.

2. For easy understanding, parties to the present revision petitions shall be referred to as per their original status before learned Trial Court and for the sake of reference, facts are being taken from CR No.3703 of 2024.

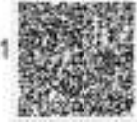
3. The facts in brief are that Mahender Singh, petitioner/plaintiff instituted a Civil Suit (Annexure P-2) for rendition of account with consequential relief of permanent injunction against Pardhan Bhatha Company (defendant No.1), a brick kiln, through its proprietor Parkash; Parkash (defendant No.2) and Anil Kumar (defendant No.3), raising the averments that Parkash (defendant No.2) verbally gave the brick kiln on rent to him and Anil Kumar (defendant No.3) from 26.11.2018 to 26.11.2023 for an amount of Rs.9 Lakh. In this partnership, the petitioner/plaintiff was shareholder to the extent of 40% and Anil Kumar (defendant No.3) to the extent of 60%. Both paid the aforesaid amount to Parkash (defendant No.2) and earned their profits in accordance with their respective shares. The agreement was reduced into writing on 14.06.2022 (Annexure P-1 in CR No.3703 of 2024 and Annexure P-2 in CR No.1549 of 2024), attested by a Notary Public. One of the conditions of agreement was that in case of any dispute between the partners, Parkash (defendant No.2), the owner/proprietor of brick kiln (defendant No.1) will have a right to take into possession the brick kiln (defendant No.1) and all the liabilities of brick kiln (defendant No.1) shall be discharged by the sale of the bricks; further that expenses on the settlement of disputes including police or Court cases shall



be borne by Anil Kumar (defendant No.3) from his own.

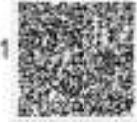
4. The petitioner/plaintiff further averred that defendants connived with each other and stopped paying him his due share from April 2021, leading to strained relations between the parties. Anil Kumar (defendant No.3) had possession of all the account books, despite intervention by respectable and friends, Anil Kumar (defendant No.3) neither gave him any money of his share from the running of the brick kiln, nor render the accounts of the partnership business, forcing the petitioner/plaintiff to file the suit seeking rendition of account and restraining Anil Kumar (defendant No.3) from selling the bricks as well as using the possession of brick kiln to the extent of the share of the petitioner/plaintiff. Along with the main suit, the petitioner/plaintiff also filed an application under Order 39 Rules 1 and 2 of the Code of Civil Procedure, 1908 (in short 'CPC') seeking similar prayer by grant of interim injunction till the decision of the suit by pleading existence of *prima facie* case; balance of convenience in his favour and irreparable loss to the petitioner/plaintiff, if interim injunction is declined.

5. Upon being put to notice, defendants No.1 and 2 appeared and filed written statement. Defendant No.2 admitted ownership of defendant No.1, the brick kiln but denied the existence of any privity of contract with petitioner/plaintiff regarding running of brick kiln (defendant No.1), and also denied the possession of the petitioner/plaintiff or his control over the brick kiln (defendant No.1). Defendant No.2 further pleaded that, at the petitioner/plaintiff's request and based on assurance that all outstanding dues related to brick kiln (defendant No.1) would be paid, he signed on the writing/agreement dated 14.06.2022, in absence of Anil Kumar (defendant



No.3). The defendant No.2 further pleaded that, through a verbal agreement, he had rented defendant No.1, a brick kiln to Anil Kumar (defendant No.3) at Rs.9 lakh per annum for the year 2018 to 2023 and has no concern of any partnership between the petitioner/plaintiff and Anil Kumar (defendant No.3). He categorically denied having given the brick kiln to the petitioner/plaintiff. Defendants No.1 to 2 also filed reply to the interim injunction application moved by the petitioner/plaintiff, raising the similar pleas as taken in their written statement, denying the existence of ingredients in favour of the petitioner/plaintiff for grant of interim injunction.

6. Anil Kumar (defendant No.3), in his written statement, admitted that brick kiln (defendant No.1) was jointly operated by him and the petitioner/plaintiff from the period February, 2018 to 15.11.2021. However, he became aware of the embezzlement by the petitioner/plaintiff in the funds related to the running of the brick kiln and manipulation of the account books, which were in the petitioner's possession. On his protest, the petitioner/plaintiff admitted his outstanding liability for the period February, 2018 to 15.11.2021 and assured to pay an amount of Rs.75,61,538/-. The defendant further pleaded that the petitioner/plaintiff failed to make the payment despite assurance and, instead, prepared a false and fabricated writing/agreement dated 14.06.2022 and filed the present suit on false facts to avoid his liability. The petitioner/plaintiff has had no concern with the business of defendant No.1 after 15.11.2021 and he independently run the brick kiln from 16.11.2021 to 16.09.2022. On these material averments, prayed for dismissal of the suit as well as the application for grant of interim injunction.

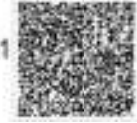


7. Learned Trial Court on the appraisal of the evidence and the documents relied by the parties, allowed the application under Order 39 Rules 1 and 2 of the CPC restrained defendants No.1 to 3 from selling the bricks, receiving any profit or interfering in the peaceful use and occupation of 40% of the share of petitioner/plaintiff in the brick kiln till the final decision of the suit.

8. Dis-satisfied with the aforesaid order, the defendants filed the Civil Miscellaneous Appeal. The learned Appellate Court upheld the findings of the learned Trial Court. However, modified the relief as granted by the learned Trial Court and directed the defendants to sell the bricks lying at the site and deposit 40% of the sale amount in the shape of Fixed Deposit in a nationalized bank till the decision of the suit.

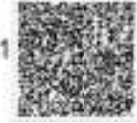
9. Aggrieved by the aforesaid order, the petitioner/plaintiff Mahender and Parkash (defendant No.2), preferred these revisions.

10. Mr. Anmol Rattan Singh Sidhu, Senior Advocate, learned counsel for the petitioners in CR No.1549 of 2024, urges that the suit framed by petitioner/plaintiff-Mahender for rendition of account is misconceived as against present petitioners/defendants No.1 and 2, as they have been involved in the dispute *inter se* the plaintiff -Mahender and Anil Kumar (defendant No.3) regarding their business transactions. Defendant No.2 (as the proprietor of defendant No.1), had leased the brick kiln (defendant No.1) to Anil Kumar (defendant No.3) to run the business, who returned possession of the brick kiln (defendant No.1) on 26.09.2022, and defendant No.2 issued a receipt (Annexure P-5 annexed with CR No.1549/2024) in this regard in favour of defendant No.3. Thereafter, defendant No.2 leased the



brick kiln to one Parkash Chand on 10.11.2022 vide lease agreement (Annexure P-9 annexed with CR No.1549 of 2024). Learned counsel submits that the passing of the impugned order, has seriously prejudiced the petitioner/defendant No.2's rights in the brick kiln, of which he is the owner, and prays for the acceptance of the petition by setting aside the impugned order. In support of his contention, he has relied upon judgment of Hon'ble the Supreme Court in *K.C. Skaria Vs. Govt. of State of Kerala and another, (2006) 2 Supreme Court Cases 285* and judgments of this Court in *Mrs. Rukhsana A. Rein and another Vs. J.L. Arora, Civil Revision No.4366 of 2008 decided on 23.09.2009; Rajesh Kumar Vs. Sagar Cloth House and another, RSA No.546 of 2014 decided on 13.01.2015* and *Rajinder Kaur (deceased) through legal heir Usha Vs. Gurbhajan Kaur (deceased) through LRs Upinder Kaur and others, RSA No.6076 of 2015 decided on 05.04.2018 along with connected matter.*

11. Mr. R.N. Lohan, Advocate, learned counsel for the petitioner Mahender in CR No.3703 of 2024, submits that defendants No.1 and 2 do not deny the execution of writing/agreement dated 14.06.2022 wherein the share of the petitioner/plaintiff (Mahender) to the extent of 40% in the total profit has been admitted. In case the impugned order is allowed to be sustained, the petitioner/plaintiff will suffer irreparable loss as the defendants have connived together and would sell the bricks lying at the brick kiln at throw away prices, causing huge financial loss to the petitioner/plaintiff. Learned counsel also submits that the receipt dated 26.09.2022 (Annexure P-5 in CR No.1549 of 2024) relied by defendant No.2 is not binding on the petitioner/plaintiff as same is not endorsed by him.

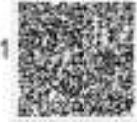


Thus, a prayer is made to set aside the order passed by the learned Appellate Court and restore the order passed by the learned Trial Court.

12. Mr. Rao Ajender Singh, Advocate, learned counsel for Anil Kumar (defendant No.3), also contends that suit of the plaintiff is not maintainable against him. Rather, the petitioner/plaintiff is liable to pay the outstanding money owned to him under their joint business conducted on the premises of defendant No.1. The petitioner/plaintiff is not providing the business accounts and related books, which are in his possession. It is stated the petitioner/plaintiff has failed to demonstrate the existence of three basic ingredients necessary for the grant of interim injunction in his favor and a prayer is made for dismissal of the revision petitions.

13. I have heard learned counsel for the parties and have gone through the paper-book and the documents appended thereto.

14. The pleadings clearly establish certain undisputed facts, such as Parkash (defendant No.2) is the owner of Bhatha Company (defendant No.1), a brick kiln. Additionally, it is evident from the pleadings that the petitioner/plaintiff and Anil Kumar (defendant No.3) conducted their business of running the brick kiln and sale of bricks on the brick kiln owned by Parkash. Although Parkash (defendant No.2), claimed that he rented the brick kiln (defendant No.1) to Anil Kumar (defendant No.3) and not to the petitioner/plaintiff, he also admitted to having executed a writing/agreement dated 14.06.2022 on the request of the petitioner/plaintiff. Furthermore, petitioner/plaintiff informed defendant No.2 that he has 40% partnership interest with Anil Kumar (defendant No.3) and further expressed to clear the outstanding rent of Rs.27 Lakh from the year 2020 to 2022 and other dues.



Upon the petitioner/plaintiff's request, he (defendant No.2) executed a writing/agreement dated 14.06.2022.

15. A perusal of the writing/agreement of Pardhan Bhatha Company Harchandpur shows that Parkash (defendant No.2) admits the petitioner/plaintiff's share in the brick kiln. From the above discussed pleadings of the parties, it is *prima facie* made out that petitioner/plaintiff and Anil Kumar (defendant No.3) conducted their business of running the brick kiln and sale of the bricks in partnership, on the brick kiln (defendant No.1) owned by Parkash (defendant No.2).

16. Since petitioner/plaintiff, filed a suit for rendition of account and a permanent injunction, seeking an interim injunction to restrain the defendants from selling the bricks to the extent of his share, and further sought to restrain the defendants from interfering with the business of the brick kiln to the extent of his 40% share, the petitioner/plaintiff, was therefore, required to establish three basic ingredients governing the grant of interim injunction, i.e. *prima facie* case, balance of convenience in his favour and irreparable loss to him, if injunction is declined.

17. The petitioner/plaintiff has relied upon the writing/agreement dated 14.06.2022 to lay his claim on the brick kiln (defendant No.1) and running of business of sale of bricks to the extent of 40% share. This agreement is evidently signed by the petitioner/plaintiff and Parkash (defendant No.2) and not by Anil Kumar (defendant No.3). Surprisingly, neither the petitioner/plaintiff nor Anil Kumar (defendant No.3) has placed on record any partnership agreement indicating that one was formally prepared and executed between the parties. Nonetheless, the



petitioner/plaintiff cannot wriggle out from the writing/agreement dated 14.06.2022, shown to have been executed between Parkash i.e., proprietor of Pardhan Bhattha Company and tenant– Mahender Singh (plaintiff), which reads as under:-

**“AGREEMENT OF PARDHAN BHATTHA COMPANY
HARCHANDPUR**

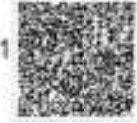
That the applicant is the Proprietor of Pardhan Bhattha Company Parkash son of Singhram resident of Village Harchandpur, Tehsil Bawal, District Rewari.

1. That the applicant has given the brick kiln to Anil Kumar's son of Jagdish resident of Bawal on rent from 26.11.2018 to 26.11.2023 on annual rent of Rs.9 Lakh. Mahender Singh son of Sh. Hukam Singh resident of Village Harchandpur, Tehsil Bawal, District Rewari will be also the shareholder in this brick kiln. The share of Anil Kumar will be 60 percent and share of Mahender Singh will be 40 percent. Both the above said persons shall pay rent as per their shares.

2. That the applicant has raised zigzag construction, tubewells and got NOC from all the departments. The license of brick kiln along with NOC from all departments have been delivered. Thereafter, the above said persons will be responsible for renewal fee, NOC of other departments and all the cots for that will be paid by both the tenants.

3. That it has been settled that in case relations become strained between the tenants anil and Mahender due to some reason and if the salary etc. of labour, chowkidar and driver etc. is not given on time, in that case the applicant will have the right to take into possession defendant no.1 and all the liability of applicant will be discharged by sale of bricks.

4. That the conditions are that in case of any mishappening on the brick kiln that all the disputes regarding police, Police



Station, and courts shall be disposed of by incurring expenditures by Anil and Mahender from their own.

Applicant

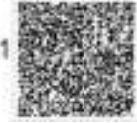
Parkash son of Singhram resident of Village Harchandpur, Tehsil Bawal, District Rewari.

Tenants:

*Mahender Singh aged about 46 years son of Hukam Singh resident of Village Harchandpur, Tehsil Bawal, District Rewari
Anil Kumar son of Jagdish resident of Bawal, Tehsil Bawal, District Rewari.”*

18. The clause No.3 of the aforementioned writing/agreement dated 14.06.2022 clearly provides if relations between the tenants Anil and Mahender become strained for any reason, and if the salaries etc. of labour, chowkidar and driver etc. are not paid on time, in that eventuality, the applicant i.e., defendant No.2 proprietor of defendant No.1 will have a right to take into possession brick kiln (defendant No.1), and all the liabilities of the applicant shall be discharged by the sale of bricks. The clause No.1 further reveals that the brick kiln was given on rent from 26.11.2018 to 26.11.2023 on annual rent of Rs.9 Lakh.

19. From the pleadings of the petitioner/plaintiff, it is apparent that relationship between him and Anil Kumar (defendant No.3) became strained. Rather, in para No.5 of the plaint, it is alleged by the petitioner/plaintiff that the defendants conspired with each other and stopped giving him his share of the income from running of the brick kiln from April 2021. It is also alleged that Anil Kumar (defendant No.3) retained all the account books and refused to provide and declare the accounts of brick kiln



which constrained him to file the suit for rendition of account. Therefore, given these admitted facts, Parkash (defendant No.2), as per clause No.4 of the writing/agreement dated 14.06.2022, had the right to take the possession of the brick kiln and sell the bricks to discharge the outstanding dues of brick kiln (defendant No.1). According to this clause, Parkash (defendant No.2), took the brick kiln from Anil Kumar (defendant No.3) on 26.09.2022 vide writing of the even date (Annexure P-5 in CR No.1549 of 2024). Although this writing was not signed by the petitioner/plaintiff and is shown to have been executed between Parkash (defendant No.2) and Anil Kumar (defendant No.3). As noted, clause No.4 of the writing/agreement dated 14.06.2022, *prima facie*, does not stipulate that Parkash (defendant No.2) was required to obtain the consent of both the tenants namely plaintiff and Anil Kumar (defendant No.3) before taking the possession of the brick kiln. Nonetheless, what would be the impact or value of this writing dated 26.09.2022 is for the learned Trial Court to assess, in the presence of other writing/agreement dated 14.06.2022 executed between plaintiff and Parkash (defendant No.2).

20. Furthermore, the petitioner/plaintiff in the complaint dated 01.12.2023 (Annexure P-11 annexed with CR No.1549 of 2024) admitted to the dispute between the partners and execution of another lease agreement by Parkash (defendant No.2) in favour of third person, thereby suggesting the brick kiln is no longer in the possession of the petitioner/plaintiff and defendant No.3. The petitioner/plaintiff, therefore, in the light of clause No.4 of the agreement/writing dated 14.06.2022, failed to make out a *prima face* case in his favour or even establish a balance of convenience seeking to



restrain the defendants from selling the bricks or interfering in the use of the brick kiln. Admittedly, the petitioner/plaintiff has filed a suit for rendition of account, and the learned Trial Court is seized of the matter, adjudicating upon the rival claims of the parties. In view of this also, the petitioner/plaintiff cannot be said to suffer any irreparable loss, as his rights would depend upon the outcome of the decision of the suit. As per discussion, it is held that both the learned Courts below materially erred in appreciating the evidence and position of law governing the grant of interim injunction and fell into jurisdictional error in allowing the application.

21. In view of the aforesaid discussion, revision petition bearing CR No.1549 of 2024 is allowed and order passed by learned Appellate Court dated 31.01.2024 affirming the findings of the learned Trial Court granting stay and further giving direction of depositing 40% of the sale proceeds of the share of the petitioner/plaintiff in FDR is hereby set aside and revision petition bearing CR No.3703 of 2024 filed by the petitioner/plaintiff is dismissed. Accordingly, the application under Order 39 Rules 1 and 2 of the CPC is dismissed.

22. It is noted that observations made above should not be construed as an expression of opinion on the merits of the case. Same are purely confined to the present controversy and deliberations.

23. Pending miscellaneous application(s), if any, is/are disposed of accordingly.

SEPTEMBER 05, 2024

d.gulati

**(RITU TAGORE)
JUDGE**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No