
(1996) 10 P&H CK 0108

In the Punjab And Haryana At Chandigarh

Case No : Civil Miscellaneous Petition No. 2756-CI of 1996 in F.A.O. No. 1026 of 1995

Ram Lal and Others

APPELLANT

Vs

Gian Chand and Others

RESPONDENT

Date of Decision : 11-10-1996

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 40 Rule 1

Citation : (1996) 114 PLR 695

Hon'ble Judges : Sarojnei Saksena, J

Bench : Single Bench

Advocate : H.L. Sibal and Arun K. Bakshi, for the Appellant; R.C. Setia and M.S. Uppal, for the Respondent

Final Decision : Dismissed

Judgement

Sarojnei Saksena, J.—Respondent No.1-Gian Chand has filed an application under Order 40 Rule 1 read with Section 151, CPC for appointment of a receiver.

2. Factual matrix of the case is that Shri B.N. Kakkar was appointed sole arbitrator on 20.11.1988 to settle the disputes between the parties. After holding arbitral proceedings, arbitrator gave his award on 30.1.1989. The arbitrator ordered both the parties to take the possession of the property as per the award, whereupon the appellants took possession of the property in dispute by meets and bounds. An application was filed before the lower Court for making award the rule of the Court. Respondent-applicant Gian Chand filed objections u/s 30 of the Arbitration Act. The learned Sub Judge I Class, Dasuya vide his order dated 27.1.1995 accepted the objections and set aside the award. Assailing that order, the appellants have filed this appeal. During the pendency of this appeal, respondent-applicant Gian Chand has filed this application for appointment of receiver.

3. In a nutshell the applicant-respondent's case is that he is the partner of half

share in the firm in dispute. The arbitrator exceeded his jurisdiction by dividing the property and delivering possession of the property to the appellants. The appellants forcibly took possession of the best portion of the disputed property taking undue advantage of their muscle and money power. Applicant-respondent reported the matter to the police also that the appellants have taken possession forcibly, but nothing was done by the police. The appellants are still in illegal possession of the said property of the firm even though the award has been set aside. The appellants are using the machinery, factory and the property of the firm for their own use and benefit. They have set up new firms also. The appellants and other respondents are milling the rice of other agency and their own by using the valuable property and machinery of the firm and also selling it without making any account in the account books of the firm. The gross profit for milling of one quintal rice of an agency is Rs. 54 per quintel and in the fast year, the milling was about Rs. 1,40,000/- quintels. Thus, a gross profit of multi-lacs was earned in the milling of the rice of the firm. This year also the appellants and other respondents have done milling of about 20000 bags of paddy from government agency and about 80000 quintels for their own on the property of the firm. The appellants and other respondents earned profit of about Rs. 40 lacs. Thus, the appellants and other respondents have caused loss to the applicant-respondent No. 1 and also caused loss to the machinery and other property of the firm. The appellants and other respondents are also selling the rice husk and rice powder in cash as well as illegally by making adjustments with the dealing parties which is not accountable at all. There are three telephones of the firm which were in possession of applicant and other respondent. The firm has to recover lacs of rupees from market but the appellants and other respondents are not taking any legal action against the persons from whom recoveries are to be made and ultimately all such suits for the recovery of the same will be barred by limitation causing loss of multi lacs to the firm.

4. Applicant-respondent No. I also pleaded that he is an old infirm man of 85 years old. He has no son. His only daughter is a widow. He cannot move without the help of another person. His wife is also aged 75 years. The appellants and other respondents have also constructed few rooms and installed a new machinery without the permission of the applicant-respondent No. I during the pendency of the objection petition filed by him. They have also obtained new electric connections in the firm premises and are thus, earning huge amount from the assets of the partnership firm. The applicant-respondent No.1 has been completely deprived of the partnership firm and its profits. Appellants are not even maintaining correct accounts. If the appeal is dismissed then the applicant-respondent No.1 will suffer irreparable loss, substantial injury and annoyance and he would not be able to enjoy the benefit from the judgment because by that time the machinery of the firm and other assets would be completely replaced and destroyed by misuse of the appellants. The appellants would also show the fictitious losses and expenses to burden the applicant-respondent No.1 as he is having half share in the property, machinery and other assets of the

firm. Hence, it is prayed that it is a fit case, a receiver be appointed and powers be given to the receiver for realisation, management, protection, preservation and improvement of property to collect rent and profits of firm thereafter. Applicant-respondent No.1 Gian Chand filed his own affidavit in support of the petition.

5. The contentions were refuted by the appellants in their reply. They averred that Ram Lal and Gian Chand are two brothers. They established a firm, which was running its business smoothly, but applicant-respondent No.1 withdrew a sum of Rs. 28 lacs from the bank account of the firm M/s Jai Bharat New Mandi Rice Dealers" Association, a sister concern of M/s Gian Chand Ram Lal. It was with this money that both the firms were carrying on the business. Vinod Kumar-respondent No.4 son of the appellant joined hands with respondent No.1. Respondent No.1-applicant and respondent No.4 Vinod Kumar misappropriated the said amount and deposited it in the accounts of their wives. Hence, the appellants were compelled to file a suit against the respondents in order to bring back the money to the firm itself. They filed the suit for injunction, temporary injunction was granted in their favour. As a counterblast, respondent No.1-applicant has filed this application for appointment of receiver so that the appellants may be deprived of running their business and earning any profit. Respondent No.1-applicant is not interested in any business. His only intention is to ruin the business of the appellants. The money was withdrawn by respondents after service of notice for dissolution of the partnership firm.

6. During the arbitral proceedings, both the parties to the arbitration entered into possession of the property allotted to each of them by the arbitration award. The appellants are in possession of that property, which was allotted to them by the arbitrator under the award. They have made improvements in the building, renovated it, purchased fresh machinery, got repaired old machinery by spending huge amount and started the sheller. New telephone connections were obtained. For effecting all these improvements and repairs, the appellants borrowed money from the bank and other sources. They have started their business in the name and style of M/s Narang Impax Private Limited and M/s Ram Lal Vijay Kumar. These are new concerns and they have nothing to do with the old firm M/s Gian Chand Ram Lal. The appellants and respondents are in possession of their respective properties given to them under the award. They objected that they cannot be deprived of their "defecto" possession and enjoyment of the property wherein they have spent huge amount in order to restart their business. They denied that they have taken possession of the best part of the property illegally or forcibly by taking any undue advantage of their muscle or money power. No doubt, the lower Court by the impugned order has set aside the award by accepting objections raised by applicant-respondent No.1, but the appellants have filed this appeal challenging that order. In the firm M/s Gian Chand Ram Lal there were five partners. Each partner had 1/5th share in the partnership firm. The appellants are not in illegal possession of any portion of the property. The arbitrator has divided partnership assets of the firm among all the partners. The

appellants are in possession of 1/2 share of the property allotted to them by the arbitrator. Applicant-respondent No.1 was allotted more machinery and building by the arbitrator, but he has kept it closed since 1989. He, being, head of the family is having all the movable belongings of the family and enjoys his life. The appellants were not given any movable property of the family. The applicant cannot have any claim or interest in separate business of the appellants. They are running their both the aforementioned firms and are earning profits also. They are also maintaining accounts properly. The dissolved partnership is not doing any business; the appellants have not sold any rice belonging to the dissolved firm; old telephone connections of the dissolved partnership firm were disconnected for want of payment of dues thereafter the appellants have taken new telephone connections by investing their money. The applicant-respondent No.1 and the appellants are living in the same house. The applicant-respondent No.1 has property worth crores. By filing this petition, he only wants to harass the appellants and to deprive them of the profits of their huge investment. They also objected that it is not a fit case for appointment of a receiver.

7. The only point for consideration is whether in the facts and circumstances of the case, it is just and convenient to appoint a receiver to take charge of the property which is in possession of the appellants.

8. Mr. Sibal, learned counsel for respondent No.1 - applicant strongly stressed that the applicant-respondent No.1 is an old man, arbitrator was appointed to settle the disputes between the partners; he acted beyond the parametres of the reference and divided disputed property amongst the partners by taking help from a third person. He misconducted the proceedings as well as himself. In the garb of the said award, the appellants have forcibly taken possession of the best portion of the disputed property. They have destroyed the old property of the firm. The appellants have gone to the length of establishing new firms and are, thus, enjoying the assets of the firm in their own name, thereby they are depriving the applicant-respondent No.1 from enjoying the assets of the firm. Learned counsel submitted that the appellants have changed the whole scenario of the disputed property. They have constructed new rooms; new telephone connections have been installed; new machineries have been purchased and new firms have been established. The appellants had no legal right to affect such changes; they are not even maintaining correct honest accounts; no steps are being taken to recover the amount from the persons who are liable to make payment to the firm. Thus, respondent No.1-applicant would suffer loss being partner of half share.

9. Appellants' learned counsel valiantly argued that no doubt the appellants have taken possession of half share of the property as was delivered to them under the award. They have not misused their power; have not illegally taken possession of the suit property; rather they have made improvements in their share of the property by constructing new rooms, purchasing new machineries; getting old machineries repaired and have restarted the sheller. No doubt, they

are transacting business therein and are earning profits also, but they are correctly maintaining accounts as well; they are not destroying or damaging any property. Respondent No.1-applicant is also in possession of half of the property of the firm. He has no right to claim that a receiver be appointed on the property in possession of the appellants. In support of his contention, he has relied on Industrial Finance Corporation of India and Anr. v. M/s Sehgal Paper Ltd. and Ors. (1982)84 P.L.R. 185.

10. From the averments made by the parties and from the perusal of the impugned order, it is evident that the arbitrator divided property amongst the parties. Whether the arbitrator had such an authority or not is a question which is subjudice in this appeal. But there is hardly any ground to hold that the appellants have taken possession of half of the disputed property forcibly and illegally by using their muscle and money power. Even applicant-respondent No.1 admits that the appellants have constructed new rooms; taken new telephone connections; purchased new machineries; have restarted the sheller and are doing business of rice milling and are earning huge profits. In T. Krishnaswamy Chetty Vs. C. Thangavelu Chetty and Others, . The Madras High Court laid down the pre-requisites for appointment of a receiver which are enumerated below:-

" (1) The appointment of a receiver pending a suit is a matter resting in the discretion of the Court.

(2) The Court should not appoint a receiver except upon proof by the plaintiff that prima facie he has a very excellent chance of succeeding in the suit.

(3) Not only must the plaintiff show a case of adverse and conflicting claims to property, but, he must show some emergency or danger or loss demanding immediate action and of his own right he must be reasonably clear and free from doubt. The element of danger is an important consideration.

(4) An order appointing a receiver will not be made where it has the effect of depriving a defendant of a "de facto" possession since that might cause irreparable wrong. It would be different where the property is shown to be "in medio" that is to say, in the enjoyment of no one. And

(5) The Court, on the application made for the appointment of a receiver, looks to the conduct of the party who makes the application and will usually refuse to interfere unless his conduct has been free from blame."

11. I am in respectful agreement with the above observations. Now it is to be considered whether in view of the above principles, the receiver should be appointed in the present case. The applicant-respondent No.1 himself has admitted that the appellants are running their business, earning profits and have invested - huge amount, have constructed new rooms; purchased new machinery; installed new telephone connections and are doing the business of rice milling. Under these circumstances, there is hardly any ground to hold that they are either destroying or causing any damage to the disputed property, they

have established their new firms; whether there are certain recoveries to be effected and what will be the result if no legal action is taken to recover these dues, who will share its burden are all disputed questions of facts which will be considered while deciding this appeal.

12. So far as appointment of receiver is concerned, in my considered view, it is neither just nor convenient to appoint the receiver. The appellants are in "de facto" possession of the said property. Receiver cannot be appointed to cause irreparable loss to them. Hence, the petition, being merit less, is hereby dismissed. But to safeguard the interest of the applicant-respondent No.1, it is ordered that appellants within 15 days shall give solvent surety of 2 lacs (to the satisfaction of the Registrar of this Court) in case their appeal is dismissed and ultimately, they are held liable to pay any amount to applicant-respondent No.1.