(2005) 01 P&H CK 0085

In the Punjab And Haryana At Chandigarh

Case No : Civil Revision No. 545 of 2005

Steel Authority of India Ltd. APPELLANT

Vs

Steel Strips Limited RESPONDENT

Date of Decision : 25-01-2005

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 5(1), Order 41 Rule 5(2), Order 41 Rule 5(3A), 151

Citation : (2005) 3 BC 536 : (2005) 140 PLR 157

Hon'ble Judges : Ashutosh Mohunta, J

Bench : Single Bench

Advocate : Ashok Aggarwal and Sanjeev Sharma, for the Appellant; M.L. Sarin and Akshay Bhan, for the Respondent

Judgement

Ashutosh Mohunta, J.—The petitioner has filed the present revision against the order dated 13.1.2005 passed by the Addl. District Judge, Chandigarh by which the application of the petitioner under Order 41 Rule 5 read with Section 151 CPC for staying the operation of the judgment and decree dated 20.11.2004 passed by the Civil Judge (Sr. Divn.), Chandigarh was dismissed.

2. The Civil Judge (Sr. Divn.), Chandigarh vide his judgment dated 20,11,2004 had decreed the suit of the plaintiff/respondent for recovery of an amount of Rs. 93,95,877/- with interest at the rate of 18% per annum till the date of decree and interest at the rate of 12% per annum from the date of decree till the date of recovery of the amount. Against the judgment, an appeal was filed by the petitioner before the Additional District Judge. An application for stay of the decree was also filed which has been dismissed by the impugned order.

3. It has been contended by Mr. Ashok Aggarwal., learned Senior Advocate appearing for the petitioner, that execution of the decree of the trial court should be stayed because the appellant before the lower Court the Steel Authority of India and the entire amount is dispute is absolutely secured with the petitioner. It was argued that most of the claims made by the plaintiff/respondent were

time barred and as such the judgment of the trial court was liable to be stayed. It is also contended that as the amount in question is huge, therefore, the petitioner is ready and willing to deposit the entire amount but the plaintiff/ respondent should be restrained from encashing the same till the decision of the appeal. It has further been contended by Mr. Aggarwal that the financial condition of the respondent Company is not sound and, therefore, no amount should be ordered to be released to the respondent He has in the alternative argued that the respondent be directed to furnish Bank Guarantee.

4. The arguments of Mr. Aggarwal have been controverted by Mr. M.L. Sarin, learned Senior Advocate appearing for the respondent. It has been argued by the learned Counsel for the respondent that the Hon''ble Apex Court has held in a large number of cases that money decrees should not be stayed. It has further been argued by Mr. Sarin that as per the provisions of Order 41 Rule 5(3-A) of the C.P.C. no order for stay of execution can be made under Sub-rule 1 or 2 unless the Court making it is satisfied that substantial loss may result to the party seeking stay. Counsel for the respondent has relied upon a judgment of the Hon''ble Apex Court in Mehta Teja Singh and Company Vs. Grindlays Bank Limited, wherein their Lordships of the Apex Court have held as under:-

"It is true that the appeal is directed against an order passed by the High Court, which is of an interlocutory nature. We, however, find it somewhat difficult to appreciate that the High Court should have granted stay of a money decree, and that too, by requiring the appellant before it (respondent herein) - Grindlays Bank Ltd. - to deposit only a part of the decretal amount. We, therefore, direct that the respondent shall deposit in the High Court, within four weeks from today, the balance of the decretal amount which we are told is about Rs. 1,10,000/- (Rupees one lakh and ten thousand). The appellant-M/s Mehta Teja Singh and Co. will be at liberty to withdraw the said amount on furnishing Bank Guarantee to the satisfaction of the Prothonotary of the High Court."

5. The case of Jai Parshad v. Ram Singh (1982)84 P.L.R..505 has also been relied upon.

6. After hearing the learned counsel for the parties and after perusing the judgment of the trial Court, it is clear that the amount involved in the present case is huge i.e. Rs. 93,95,877/- as the principal amount and if the interest portion is added, then the total decretal amount comes to approximately Rs. 1,90,00,000.00 (Rupees one crore and ninety lacs only). Moreover, the case of the respondent Company has been pending before the Board for Industrial and Financial Reconstruction which shows that the financial condition of the respondent Company is not very sound and, therefore, in these circumstances the petitioner is entitled to partial stay of the judgment and decree passed by the Civil Judge (Sr. Divn.), Chandigarh dated 20.11.2004.

7. In view of the above, I dispose of the present revision petition with a direction that the petitioner shall deposit a sum of Rs. 90 lacs on or before 10.2.05 with

the Executing Court and this amount shall be paid to the respondent-Decree Holder on its furnishing adequate security bonds to the satisfaction of the Executing Court. The security must be of land or any other immovable property. Before accepting the security bonds furnished by the respondent, the Executing Court shall give notice to the petitioner. It is further directed that the amount over and above Rs. 90 lacs shall be deposited by the petitioner before the Executing Court within a period of one month from today and the same shall be deposited in a Fixed Deposit in a Nationalised Bank and this amount shall not be released to the respondent during the pendency of the appeal. Lastly, the trial Court is directed to decide the appeal within a period of two months from the date of receipt of a certified copy of this order and in case the appeal filed by the petitioner is dismissed or partially allowed, the payment of the amount which has been stayed and has been put in a Fixed Deposit shall not be made to the respondent for 15 days after the decision of the appeal.

8. Accordingly, the order of the Additional District Judge, Chandigarh dated 13.1.2005 is modified to the above extent.

9. Copy of the order be given Dasti.