(2013) 09 DEL CK 0197

In the Delhi High Court

Case No : CS (OS) No. 882 of 2012

Adarsh Kant Kapoor APPELLANT

Vs

State Bank of India and Another RESPONDENT

Date of Decision : 05-09-2013

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10, Order 12 Rule 6, Order 7 Rule 11(c)

Citation : (2013) 09 DEL CK 0197

Hon'ble Judges : Dr. S. Muralidhar, J

Bench : Single Bench

Advocate : Sushil Kumar Singh, Advocate for Defendant No. 1, Mr. Kapil Yadav and Mr. Rahul Khurana, Advocates for Defendant No. 2, for the Respondent

Judgement

S. Muralidhar, J.

IA Nos. 5255 of 2013 (under Order XII Rule 6 CPC) & 8847 of 2013 [under Order VII Rule 11(c)]

1. The background to this application is that the aforementioned suit has been filed by the Plaintiff Dr. Adarsh Kant Kapoor against State Bank of India, Vikas Puri Branch, New Delhi (Defendant No. 1) and his mother Smt. Shakuntala Kapoor (Defendant No. 2) seeking a recovery of Rs. 33,14,388 along with pendente lite and future interest at the maximum legally permissible rate or at the discretion of the Court. Initially filed as a summary suit, it was later converted into regular suit by an order dated 20th November 2012. The Plaintiff''s father died in 1979 after which his mother, Defendant No. 2, started receiving the monthly pension of the Plaintiff''s father. It is stated that the pension amount was directly deposited into an account with Defendant No. 1, SBI. The Plaintiff''s case is that his mother has no other source of income except the said pension amount. The Plaintiff states that he is living in USA since 1989. The Plaintiff is stated to have sent his personal money in the sum of $1,04,985 to his NRE savings bank account with the SBI Main Branch on 16th January

2009. It is stated that SBI credited a sum of Rs. 50,97,547 to his account after converting the dollars into rupees at the prevalent exchange rate. The Plaintiff states that by a letter dated 16th January 2009, he issued a cheque for Rs. 25 lakhs from the aforementioned NRE savings bank account to the Defendant No. 1, SBI, for purchase of five fixed deposit receipts (FDRs) of Rs. 5 lakhs each in the joint names of himself and Defendant No. 2 with ''either or survivor'' mode of operation. The Plaintiff states that by a letter dated 14th February 2009, SBI delivered five FDRs of Rs. 5 lakhs each of that date to the Plaintiff at his US address. The FDRs were effective from 30th January 2009 with the maturity date of 27th January 2011.

2. The Plaintiff alleges that Defendant No. 2 with the assistance of her acquaintance, one Mrs. Uma Sethi and her sons Vishal Sethi and Vineet Sethi, and in connivance with some of the employees of SBI, obtained duplicate copies of the said five FDRs by stating that the originals thereof had been misplaced. On coming to know of this, the Plaintiff, by his email dated 5th September 2011, informed SBI that the duplicate FDRs had been fraudulently obtained and that the originals were still in his possession. The Plaintiff states that while SBI declined to accede to the request of Mrs. Uma Sethi to encash the said FDRs, it also declined the Plaintiff''s request as well. In the circumstances, the Plaintiff filed the present suit praying for the reliefs as noted before.

3. In her written statement, Defendant No. 2 states that she is a widow and an illiterate lady aged 85 years. According to her, the Plaintiff being her son was legally and morally bound to maintain her. Instead he was claiming her monies lying in various banks in the joint names of herself and the Plaintiff. She states that the Plaintiff, using undue influence and fraud, sold the property of Defendant No. 2 at Tagore Garden in the year 1996-97 for a total consideration of Rs. 40 lakhs and thereafter invested it in various banks. Defendant No. 2 has refuted the claim of the Plaintiff that the above property was bequeathed to him by his maternal grandfather. According to Defendant No. 2, the Plaintiff assured her that her entire money was deposited in banks by way of FDRs in her name and upon maturity she would get the entire money. Believing the Plaintiff, Defendant No. 2 is stated to have entrusted her lifelong savings to him. In para 4 of the written statement, Defendant No. 2 states that the Plaintiff has, in his cross examination in a connected Suit No. 66 of 2012, admitted to having withdrawn Rs. 10 lakhs from the HDFC Bank which had the joint FDRs of Defendant No. 2 and the Plaintiff. Defendant No. 2 states that the Plaintiff has no right, title or interest in the five FDRs which form the subject matter of the present suit. Defendant No. 2 states that in order to harass her, the Plaintiff has filed Civil Suit No. 121 of 2012 before the Civil Judge, Tis Hazari Courts, Delhi claiming damages against her in the sum of Rs. 1 lakh. Defendant No. 2 further states that her signatures on the General Power of Attorney filed by the Plaintiff along with the plaint have been forged by the Plaintiff.

4. Replication to the written statement is yet to be filed by the Plaintiff. It must

also be noted that pursuant to an order dated 12th October 2012 passed by the Court, SBI has on 31st October 2012 deposited in Court the proceeds of the five FDRs and that sum has been placed in a fixed deposit.

5. In the present application under Order XII Rule 6 CPC, the Plaintiff contends that in the written statement filed there are numerous ''admissions'' by Defendant No. 2 on the basis of which the defence of Defendant No. 2 should be struck off and a judgment and decree as prayed for should be passed forthwith. A list of such ''admissions'' have been set out in para 8 of the application.

6. The Court has heard the submissions of the Plaintiff who appears in person. The Plaintiff appears to be under a misconception as to what constitutes ''admission'' for the purposes of Order XII Rule 6 CPC. Unless there is an unequivocal admission by the Defendant No. 2, either express or by implication, that the Plaintiff is entitled to the decree as prayed for, there cannot be a decree under Order XII Rule 6 CPC. On a careful perusal of the written statement, the Court is unable to discern any unequivocal admission, either express or implied, by Defendant No. 2 that the Plaintiff is entitled to the decree as prayed for. She had repeatedly and categorically urged in her written statement that the five FDRs belong to her and it is her money that has been converted into the five FDRs and that she is alone entitled to the proceeds thereof.

7. While the truth of the respective rival contentions of the parties will be tested at the trial of the suit, at this stage it is apparent to the Court that the above stand of the Defendant No. 2 can hardly be said to be an admission by her on the basis of which the suit can be decreed under Order XII Rule 6 CPC. The reliance at this stage by the Plaintiff on the decision in Anumati Vs. Punjab National Bank, is to no avail for the simple reason that whether in fact Defendant No. 2 had no authority to issue instructions to SBI in the manner in which she did, and as a result of which the Plaintiff has been prevented from encashing the FDRs, would be a matter of evidence. For the same reason, the question of the applicability of the ratio in the decision in Best Enterprises Vs. S. Elanchizian and Another, cannot be considered at this stage.

8. The application under Order XII Rule 6 CPC is accordingly dismissed. It is however, clarified that nothing in this order should be construed as an expression by the Court of an opinion on the respective contentions of the parties on merits.

IA No. 23061 of 2012 (under Order I Rule 10 CPC)

9. This application does not survive as Defendant No. 2 already stands impleaded. The application is disposed of as such.

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10. The Plaintiff makes a grievance that the costs of Rs. 3,000 which were to be paid by SBI by the order dated 1st May 2013 of the Joint Registrar (''JR'') has still not been paid. The costs shall be paid by SBI to the Plaintiff not later than 12th September 2013 and proof thereof be placed on record.

11. The Plaintiff states that he will file a replication within two weeks.

12. List before the JR on 20th September 2013 for admission/denial of the documents. By that date, the parties will file their affidavits by way of admission/ denial and produce the originals of the documents relied upon by them respectively. List before the Court for framing of issues on 12th February 2014.