(1998) 03 AHC CK 0071

In the Allahabad High Court

Case No : First Appeal No. 105 of 1997

Ashok Thapar and Others — APPELLANT

Vs

Vijaya Bank and Others — RESPONDENT

Date of Decision : 23-03-1998

Acts Referred:

Contract Act, 1872 — Section 2

Citation : (1998) 03 AHC CK 0071

Hon'ble Judges : Palok Basu, J and N.S.Gupta, J

Final Decision : Dismissed

Judgement

N. S. Gupta, J.—This is a plaintiffs'' appeal against the judgment and decree dated 531997 passed fey the then First Additional Civil Judge (Senior Division)^ Ghaziabad, dismissing the suit of the plaintiffs for the issue of mandatory and prohibitory in junction order.

2. According to the plaintiffs, plaintiff M/s. Regency Express (P) Ltd. is a corporate body, of which Sri Ashok Thapar and Smt. Veena Thapar are the Directors. They are engaged in the business of constructing buildings for residential and commercial purposes. The plaintiffs claimed that they constructed a building known as Thapar Plaza on G.T Road, Ghaziabad, which was a residential cum commercial complex. The plaintiffs offered to let out the ground floor of the said building to the defendant Vijaya Bank at the rate of Rs. 10 per sq. feet and basement at the rate of Rs. 6 per sq. feet. This offer was made by the plaintiffs in writing by means of their letter dated 2281988. The superior officers of the Bank gave assurance to the plaintiffs in this behalf and on 2791988, the officers of the Bank informed the plaintiffs that the offer of the plaintiffs was under consideration. It was alleged that the defendants agreed to pay . six months rent in advance and an amount equivalent to sixty months rent in the form of loan. The plaintiffs claimed that the defendant Bank wanted to set up one of its branches in this complex by shifting the same from Navyug Market. The plaintiff was maintaining the Current Account No. 868 with the defendant

Bank on 261088, the plaintiffs company made a request for the grant of Rs. 50 lacs as over draft which was duly granted by the defendant bank on an interest of Rs. 16.5 per cent per annum. The defendant Bank asked the plaintiffs to mortgage their property situate at Ghaziabad as equitable mortgage. The said property was valued crores of rupees. The plaintiffs informed the defendant bank about their deal with M/s. Webbing and Belting Factory (P) Ltd. Ghaziabad for a sum of Rs. 4 crores. The plaintiffs deposited title deeds relating to their property Bearing No. A3, Ramposh Enclave situate at Delhi, for the satisfaction of the defendant bank. The officers of the defendant Bank obtained the signatures of the plaintiffs on certain printed and blank papers on 271989 and granted cash credit limit of Rs. 50 lacs to the plaintiffs at the rate of Rs. 17.5 per cent per annum. In this way cash credit limit of the ''plaintiffs was granted by the defendants bank to the extent of one crore. The plaintiffs asked the defendant Bank to take their property situate at Ghaziabad on rent, but instead of doing so, the defendant Bank sent a notice to pay the entire loan within a period of three weeks. The plaintiffs pleaded that one Smt. Subhawati Raina was owner of the property bearing No. A3, Pamposh Enclave, New Delhi, who had executed a will dated 821982 in favour of plaintiff No. 2 Smt. Vee.na Thapar. Smt. Subhawati Raina was alive. The defendant Bank had, therefore, no right to withhold the papers relating to the said property.

3. The defendant bank contested the suit on the ground that they granted cash credit facility to the plaintiffs to the tune of Rs. one crore and in that connection, the plaintiffs had mortgaged their property situate on G.T. Road, Ghaziabad as well as A3 Pamposh Enclave, New Delhi. The defendants further pleaded that they never accepted the offer of the plaintiffs to take their property on rent situate at Ghaziabad. All the documents were properly executed by the plaintiffs and the amount of interest was never reduced by the defendant Bank. It was pleaded that the defendant Bank took legal proceedings against the plaintiffs as they failed to maintain their commitment for the repayment of the loan in question. It was pleaded that Smt. Subhawati Raina had transferred th4 property situate at New Delhi in favour of the plaintiff No. 2 in the year 1984, On the request of Smt. Subhawati Raina, ithe Delhi Development Authority had mutated the name of Smt. Veena Thapar pn the said property known as A3, Pamposh Enclave, New Delhi. It was further plekded that no cause of act ion arose to the plaintiffs for filing the suit. The jurisdiction of the court at Ghaziabad was also assailed.

4. The pleadings of the parties gave rise to the following issues:

(i) Whether the plaintiffs were entitled for the adjustment of Rs. 46,000 per mensum on account of rent of their property situate at Ghaziabad and further at the rate of Rs. one lac thirty thousands with effect from 7380 in respect of their property situate at Ghaziabad known as Thapar Plaza, G.T Road, Ghaziabad ?

(ii) Whether there was any agreement enforceable at law in between the plaintiffs and tie defendants for taking the plaintiffs'' property Thapar plaza on rent?

(iii) Whether the courts at Ghaziabad had territorial jurisdiction to try the suit?

(iv) Whether the plaintiffs were entitled to maintain the suit?

After recording the evidence of the parties, the learned trial Judge found that there was no lawful agreement between the plaintiffs and the defendants for taking the plaintiffs'' property Thapar Plaza G.T. Road Ghaziabad on rent and, therefore, the defendants were not liable to adjust the amount of sofailed rent towards loan in question. He accordingly dismissed the suit; hence the appeal.

5. We have heard the learned Counsel for the parties and have perused the record of the case.

6. We take upon the points for determination one by one as under:

A certified copy of the minutes of the plaintiffs company authorising Sri D.B. Singh, General Manager, to sign and execute petitions, to give affidavits and to engage advocates and to do all acts for institution of any suit against the defendant bank was also filed before the court below. It is, therefore, clear that Sri D.B. Singh was properly authorised by the plaintiffs company to file a suit.

7. According to the averments of the plaint, the plaintiffs were in need of money for the purposes of constructing a building known as Thapar Plaza situate on G.T. Road at Ghaziabad and for that purpose, the defendant bank had granted an over draft limit to the tune of Rs. One crore. The plaintiffs pleaded that there was an understanding between them and the defendant bank that the defendant bank would take the basement of the first floor of the said building on rent and would shift their branch into the said building and further to adjust the amount of the loan in question towards the rent of the said building. The said building being situate at Ghaziabad and the plaintiffs having set up a tenancy agreement with regard to the said building, we hold that the courts at Ghaziabad were fully competent to entertain the suit in which the relief of mandatory and prohibitory injunction was sought by the plaintiffs.

Point Nos. I and II

There is no written agreement on record to show that the defendant bank ever accepted the plaintiffs'' offer to take the plaintiffs'' building known as Thapar Plaza on rent.

8. The plaintiffs examined Sri D.B. Singh, General Manager of their company as P.W. 1 and Sri Avinash Washim, accounts officer of their company as P.W. 2. The defendants examined Sri K. Sachchidanand Sethi, Chief Manager, Vijaya Bank, Hauz Khas, New Delhi asD.W. 1.

9. The precise question which arises for determination before this Court is to see as to whether the plaintiffs and defendants had entered into a tenancy agreement with regard to the property known as Thapar Plaza situate at G.T.

Road, Ghaziabad. True it is, therefrom the various letters filed on behalf of the plaintiffs which were written by the plaintiffs company to the defendant bank. It is quite clear that time and again the plaintiffs had offered to let out their aforesaid premises on rent to the defendant bank, but there is nothing on record to prove that the offer sent by the plaintiffs was ever accepted by the defendant bank.

10. Dr. R.G. Padiya has vehemently argued before us that by the fact that the plaintiffs were having fixed deposits to the tune of Rs. 50 lacs with the defendant bank and that in spite of those deposits they borrowed a loan from the aforesaid bank, it should be concluded that an agreement was arrived in between the plaintiffs and the defendant bank that the defendant bank would take the plaintiffs building situate at Ghaziabad on rent and, therefore, it should be concluded from the letters which were sent by the plaintiffs that a valid contract of tenancy was arrived at in between the parties. We are unable to agree. All the letters relied upon by the plaintiffs in support of their claim were offers made by the plaintiffs. The mere fact that some of the officer mentioned in one of his letters that the offer of the plain tiffs was receiving consideration does not amount to the acceptance of the offer made by the plaintiffs and as such the offer submitted by the plaintiffs cannot legally mean to have been accepted by the defendant bank by implication.

The mere fact that the plaintiffs appellants had fixed deposits of Rs. 50 lacs with the respondent bank bearing an interest of Rs. 10.5 percent per annum and yet they had subsequently taken the loan of Rs. 50 lacs from the same bank at the enhanced rate of interest at the rate of Rs. 17.5 per cent per annum does not in any way reflects the acceptance of the defendant bank that the loan which the defendant bank had advanced to the plaintiffs and which the plaintiffs company may have invested in the building in question viz. Thapar Plaza at Ghaziabad, the intention of the defendant bank to take the premises of the plaintiffs on lease./

11. It is important to note here that the mere fact that the plaintiffs deposited their title deeds relating to their property situate at Ghaziabad or Delhi with the defendant bank does not lead to an inference that the plaintiffs did so in pursuance of the tenancy agreement. Those title deeds may have been deposited by the plaintiffs as a collateral security for over draft facility which the defendant bank had granted to the plaintiffs.

12. All the letters sent by the plaintiffs were unilateral act of the plaintiffs to submit their offer to the defendant bank for taking the premises on rent. In the absence of any specific acceptance of those offers by the authorised officer of the defendant bank, we are of the opinion that there was nothing wrong on the part of the court below to have discarded the claim of the plaintiffs. When a lawful agreement enforceable at law was never arrived at between the parties, there was no question of any adjustment of the loan towards alleged rent of the plaintiffs building.

13. The fact that the plaintiffs kept their building vacant in the hope of letting the same to the defendant bank was only a wishful thinking of the plaintiffs appellants which in the absence of lawful agreement on record cannot be legally enforced by the court.

14. It is needless for us to go into the controversy of the ownership of the property bearing No. A3, Pamposh Enclave, New Delhi and the deposit of the title deed of the said property in order to create an equitable mortgage as the said controversy is pending for adjudication in a separate suit which has already been filed by the defendant bank in the court at New Delhi.

15. Under the circumstances we find nothing wrong in the approach of the court below to have not accepted the claim of the plaintiffs. The suit was rightly dismissed by the court below.

16. The appeal has got no force which is hereby dismissed, with costs.

