

(2008) 11 DEL CK 0113

In the Delhi High Court

Case No : CS (OS) No. 864 of 1994 and IA No. 9074 of 2005, 9073 of 2005, in CS (OS) 369 of 1994, RA 28 of 2005 in CS (OS) 369 of 1994, EX.P. 36 of 2008

LIC Housing Finance Ltd.

APPELLANT

Vs

M/s. Pearl Developers (P) Ltd.

RESPONDENT

Date of Decision : 20-11-2008

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 14 Rule 2, Order 2 Rule 2, Order 20 Rule 5, Order 34 Rule 4, Order 47 Rule 1

Citation : (2008) 11 DEL CK 0113

Hon'ble Judges : Rajiv Sahai Endlaw, J

Bench : Single Bench

Advocate : Santosh Paul and Mr. Arvind Gupta, for the Appellant; A.K. Singla with Mr. Pankaj Gupta, Advocate for the defendants 1 and 2, for the Respondent

Final Decision : Dismissed

Judgement

Rajiv Sahai Endlaw, J.—The three applications aforesaid have been filed in the three suits aforesaid, all for review of the judgment dated 29th September, 2005 disposing of the three suits. Before setting out the grounds on which the review is sought, it is relevant to set out the scope of the three suits, as noticed in the judgment dated 29th September, 2005 itself. M/s Pearl Developers Private Limited (hereinafter called PDPL) had applied to LIC Housing Finance Limited (hereinafter called LIC) for a loan of Rs. 100 lacs as construction finance. LIC agreed to offer a loan of Rs 75 lacs and which was agreed to by PDPL. The loan was secured by mortgage by deposit of title deeds of PDPL's share in the proposed construction as well as of another property belonging to the defendants 3 and 4 in CS(OS)864/1994. The defendants 2 and 3 in the said suit also furnished their personal guarantees for repayment of the loan. LIC advanced an amount of Rs. 25 lacs to PDPL on 20th July, 1992. On 27th November, 1992 LIC paid Rs. 24 lacs to PDPL as second instalment of loan. LIC alleged default by PDPL in payment of interest and repayment of loan and on 20th January, 1994

sent a legal notice claiming Rs. 57 lacs to be due from PDPL. PDPL, however, instead of paying the dues of LIC, filed CS(OS) 369/1994 in this court for declaration that the covenant of payment of interest at the rates as appearing in the agreement signed with LIC was illegal, invalid, void and unenforceable and for direction to LIC to prepare PDPL's loan account in accordance with LIC's offers, representations and schemes then prevalent and for mandatory injunction for directing LIC to release the balance amount of the sanctioned loan and for a further declaration that PDPL was entitled to waiver / relief as to interest on the loan amount. LIC filed CS(OS) 864/1994 under Order 34 Rule 4 of the CPC seeking decree for recovery of Rs 59,11,638/- with interest and costs and for sale of the mortgaged property etc. PDPL and the defendants 2 to 4 in CS(OS)864/1994 contested the said suit, inter alia, on the ground that LIC ought to have disbursed the entire loan of Rs. 75 lacs immediately after sanction and non-disbursement of this loan had caused tremendous loss to PDPL and the defendants 2 to 4 (supra); that unnecessary deductions were made from the first two instalments of the loan disbursed; that PDPL had suffered tremendous loss because of inaction or arbitrary action on the part of LIC and in which regard CS(OS)369/1994 had already been filed. PDPL filed CS(OS) 113/1995 for recovery of Rs. 45 lacs on account of damages and mesne profits.

2. All the three suits were decided vide common judgment dated 29th September, 2005 (supra) and whereby a decree in terms of Order 34 Rule 4 was passed in favour of LIC. The defendants 1 to 4 in CS(OS)864/1994 were also enjoined from parting with possession of the mortgaged property.

3. The grounds of review in each of the three applications are identical. Firstly, it is stated that the judgment notices and answers the issues framed in CS(OS)864/1994 only and does not deal with or answers of the issues framed in the other two suits. On the basis of Smt. Satya Devi Vs. Rati Ram and Others, Fomento Resorts and Hotels Ltd. Vs. Gustavo Ranato Da Cruz Pinto and Others, Thungabhadra Industries Ltd. Vs. The Government of Andhra Pradesh, Naresh Ch. Deb Barma (Dead) by L. Rs. Vs. Sri Gopal Chandra Banerjee and Another, and Moran Mar Basselios Catholicos and Another Vs. The Most Rev. Mar Poulouse Athanasius and Others, it is argued that it is incumbent upon the court to pronounce judgment on all the issues and non-answering / non-adjudication of the issues in CS(OS)369/1994 and CS(OS) 113/1995 is an error apparent on the face of the record and the judgment therefore is liable to be reviewed.

4. Secondly, it is urged that during the hearing on 5th July, 2005, a question, which fell for adjudication, was formulated and which also remained to be answered/adjudicated in the judgment. It was argued that though the said question is not recorded in the proceedings of 5th July, 2005 but the formulation of the said question stands admitted in the reply of LIC to the review applications and the adjudication of the said question is relevant for the judgment in the three suits.

5. Thirdly, review is sought on the ground that the presence of the counsels for

the parties is not correctly recorded in the judgment. The counsels appearing for LIC are shown as the counsel appearing for PDPL and vice-a-versa.

6. Order 14 Rule 2 of the CPC provides that notwithstanding that a case may be disposed of on a preliminary issue, the court shall pronounce judgment on all issues. In view of the said mandatory provision of law and the judgments aforesaid cited by the senior counsel for the PDPL, there can be no dispute with the proposition that a judgment which fails to pronounce on each and every issue framed would suffer from material irregularity and would be no judgment. The Apex Court in *Moran Mar Basselios Catholicos* (supra) has also held where the judgment did not deal with and determine an important issue in the case, it would be an error apparent on the face of the record within the meaning of Order 47 Rule 1 of the CPC. Thus, the contention of the senior counsel for the PDPL as a pure proposition of law has to be accepted.

7. However, the aforesaid provisions of Order 14 Rule 2 have to be read harmoniously with Order 20 Rule 5 which while reiterating the provisions of Order 14 Rule 2 further provides as under:

5. Court to state its decision on each issue - In suits in which issues have been framed, the court shall state its findings or decision, with the reasons therefor, upon each separate issue, unless the finding upon any one or more of the issue is sufficient for the decision of the suit.

8. Thus, though non-adjudication/non consideration of any issue would be a ground for review but not, if finding upon anyone or more of the issues is sufficient for the decision of the suit. I find that the Apex Court also reiterated the same principle in *Narne Rama Murthy Vs. Ravula Somasundaram and Others*, as under:

7. We also see no substance in the submission of Mr Ramachandran that there is no finding on issue No.1. In our view, once the finding was reached on issue No.5 the answer to issue No.1 followed. Even otherwise, both these issues have been dealt with together and the reasoning given by the trial court for answering these two issues in favour of the respondents applies to both these issues.

8. In view of the above, we see no infirmity in the impugned judgment. We see no reason to interfere. The special leave petitions stand dismissed with no order as to costs.

9. The pleas aforesaid of PDPL for review have thus to be considered in the light of the law as aforesaid. A reading of the judgment sought to be reviewed does not show as if this court while pronouncing the judgment was oblivious of the two suits other than CS(OS)864/1994. It is recorded in para 10 of the judgment that defence of PDPL in CS(OS)864/1994 was, in fact, the main relief claimed by PDPL in CS(OS)369/1994. In para 11 of the judgment, the submission of PDPL to the effect that CS(OS)864/1994 be dismissed and CS(OS)369/1994 and CS(OS) 113/1995 be decreed is noticed. In para 12 of the judgment, it is recorded that

on 4th December, 1995 the three suits were ordered to be consolidated "and issues in all the three suits were commonly framed." The applications for review do not allege the said statement in para 12 of the judgment to be erroneous and not in accordance with record. Once it is the admitted position that "issues in all the three suits were commonly framed", the non-mentioning of the issues framed in CS(OS) 369/1994 and CS(OS) 113/1995 in the judgment or non dealing with the same expressly, cannot be an error apparent on the face of the record and no ground for review.

10. This court again in para 13 of the judgment noted "however, the basic and pertinent question which would help in answering the issues arising in all the three cases is whether the.....". This court in the judgment has held the question arising for decision in all the suits to be as to whether LIC was obliged to disburse the entire loan of Rs 75 lacs in a lump sum and whether full disbursement of the loan was a condition precedent for creating a liability upon PDPL and others to repay the loan with interest only after two years of rest period was over from the date of such disbursement. The said question was answered in favour of the LIC and against PDPL. Again in para 25 of the judgment, this court observed that the "principle in issue in all the three suits, as the suits had been consolidated and common issues were framed in them" was answered by the findings returned in the earlier paragraphs. This court in para 37 of the judgment negated the contention of the PDPL that the loan was repayable only after the lapse of a period of two years and found the same to be in complete contradiction to the written contract between the parties. In para 40 of the judgment this court found that the LIC had not committed any breach of the terms of the agreement between the parties and the breach was on the part of PDPL and the defendants 2 to 4 in CS(OS)864/1994.

11. Undoubtedly, on 4th December, 1995 itself when issues were framed in CS(OS)864/1994 observing that issues in all the three suits were common and they can be tried together, issues were separately framed in CS(OS)369/1994 and CS(OS)113/1995. However, the proceedings recorded in CS(OS) 369/1994 and CS(OS)113/1995 thereafter show that the files of the said two suits were being taken up as connected to CS(OS)864/1994. The witnesses were also examined once only and not separately in the three suits. It is not under challenge that the arguments were heard together.

12. The Senior counsel for PDPL has urged that issues 3 to 5 and 7 to 10 framed in CS(OS)369/1994 and issues 3, 5 and 7 to 10 framed in CS(OS)113/1995 have not been answered. He admits that the other issues framed in the said two suits stand answered in the light of the findings in CS(OS)864/1994. For convenience the issues urged to be remaining unanswered in the aforesaid two suits are set out herein below:

CS(OS)369/94

3. Whether the agreement dated 18th March, 1992 is void for the reasons stated

in the plaint? If so, to what effect?

4. Whether the loan has not been released by the defendant in accordance with the contract agreed upon between the parties and of the scheme? If so, to what effect?

5. Whether the defendant was obliged to release the loan in accordance with the scheme for Reconstruction Finance to Building & Development. If so, to what effect?

7. Whether the plaintiff has played a fraud by filing the suit as alleged in para no.1 of preliminary objection?

8. Whether the suit is barred by the provisions of Specific Relief Act?

9. Whether the suit has not been properly valued for purpose of court fee and jurisdiction?

10. To what relief, if any, is the plaintiff entitled?

CS(OS) 113/2005

3. Whether the agreement dated 18th March, 1992 is void for the reasons stated in the plaint? If so, to what effect?

5. Whether the defendant was obliged to release the loan in accordance with the scheme for Reconstruction Finance to Building& Development. If so, to what effect?

7. Whether the plaintiff has played a fraud by filing the suit as alleged in para No.1 of preliminary objection?

8. Whether the suit is barred under Order 2 Rule 2?

9. Whether the plaintiff has suffered any damage on account of any act of the defendant? If so, to what effect?

10. To what amount, if any, is the plaintiff entitled.

13. However, a bare perusal of the aforesaid issues would show that the findings in the judgment are sufficient for the purposes of the decision of the said issues also. It cannot be lost sight of that in order dated 4th December, 1995, in CS(OS)864/1994 it is recorded that issues in all the three suits are common. That being the position, there is no error apparent on the face of the record in the judgment answering the common issues as framed in CS(OS)864/1994 only. Even otherwise the issues are found to be overlapping and pleadings the same. Once a finding has been given on the pleadings, PDPL cannot be heard to say that an issue framed using a different language though having the same effect, ought to have been answered separately. It may be noticed that the issues 7 to 9 in CS(OS)369/1994 which are alleged to have remained unanswered were the defence of LIC to that suit. The effect of the judgment is that CS(OS)369/1994

has been dismissed. Similarly, the loan agreement was claimed by PDPL to be void while denying its liability in CS(OS)864/1994 and thus issues 3 to 5 in CS(OS)369/1994 are squarely covered by the findings returned in the judgment. Similarly, the issues 7 to 9 in CS(OS) 113/1995 are the defence of LIC to that suit and which defence has succeeded inasmuch as the effect of the judgment is dismissal of CS(OS) 113/1995. The issues 3 and 5 therein have been expressly answered in the judgment. The judgment having not found LIC to be in breach, the question of PDPL being entitled to any amount under Issue No. 10 therein did not arise. I thus find the proviso to Rule 5 of Order 20 to be squarely applicable to the present case and do not find any error apparent on the face of the record on this ground.

14. As far as the second ground of review is sought, there is nothing on the record to suggest that during the hearing the question as alleged was formulated. Thus, there can be no error apparent on the face of the record. Even otherwise during the course of hearing several propositions are exchanged and there is no requirement to deal with each one of them. Even otherwise, the propositions allegedly framed, even if believed to have been framed, also stand answered in the judgment. The judgment has found that there was no obligation of LIC to release the entire agreed loan amount of Rs. 75 lacs in a lump sum and the monetary claim of LIC to be in accordance with the agreement and thus there was no need for the court to contemplate on the schedule of repayment applicable if the agreement had been otherwise. The judgment is thus not reviewable on the second ground urged also.

15. As far as the third ground of review urged is concerned, strictly speaking the same is not a ground for review but falls within the ambit of clerical error or accidental slip or omission within the meaning of Section 152 of the CPC and the presence of the counsels for the parties in the judgment is ordered to be corrected in exercise of powers under the said provisions.

16. The three applications therefore are found to be meritless and are dismissed with consolidated costs of Rs. 50,000/- recoverable by the judgment debtor as part of the decretal amount. As far as the execution is concerned, it was the contention of the senior counsel for PDPL that without the final decree being drawn up, there could be no execution. The judgment debtors 1 to 4 have filed EA.No.299/2008 in the said execution seeking stay thereof owing to the pendency of the review and also on the ground that they had not received any indication from the decree holder LIC on their OTS proposal. Under Order 34 Rule 4, upon the plaintiff succeeding in a suit for sale of mortgaged property, the preliminary decree follows directing that in default of the defendant paying the amount as mentioned therein the plaintiff shall be entitled to apply for a final decree directing that the mortgaged property be sold and the proceeds of the same be applied in payment of what has been found due. The execution application of LIC is treated as an application for sale, on default by the judgment debtors to pay the amounts found due and a final decree for sale of

the mortgaged property is passed and the sale proceeds are ordered to be deposited in the court and applied for payment of the amounts found due including of the costs awarded while dismissing the applications for review. It is deemed expedient to appoint an officer of LIC only for the purposes of conducting the said sale. The LIC / decree holder to, within four weeks, furnish to the court the name of its officer who would conduct the sale of the property. In the circumstances EA.No.299/2008 is dismissed.

List before the Registrar General of this court for complying with the further formalities/finalization of terms of sale/auction on 18th December, 2008.