(2022) 01 CAL CK 0018

In the Calcutta High Court

Case No : IA No: GA/1/2021 CS No. 221 Of 2021

Padma Logistics And Khanij Pvt. Ltd. APPELLANT

Vs

Ideal Unique Realtors Pvt. Ltd. RESPONDENT

Date of Decision : 11-01-2022

Acts Referred:

Code Of Civil Procedure, 1908 — Order 13A, Order 37, Order 39, Order 12 Rule 6
Commercial Courts Act, 2015 — Section 2(c), 2(c)(i)
Insolvency and Bankruptcy Code, 2016 — Section 7

Citation : (2022) 01 CAL CK 0018

Hon'ble Judges : Ravi Krishan Kapur, J

Bench : Single Bench

Advocate : Anuj Singh, Madhuja Barman, Aman Agarwal, Trinisha De, A. K. Singh, Tilak Bose, Shaunak Mitra, Paritosh Sinha, Saubhik Chowdhury, Dipto Majumdar, Debottam Das

Final Decision : Disposed Of

Judgement

Ravi Krishan Kapur, J

1. This is an application for judgment upon admission. The suit is for recovery of a sum of Rs.6,27,72,055/- alongwith interim interest and interest upon

judgment.

2. The brief facts culminating in the filing of the suit are that, the respondent had approached the petitioner to avail of a short-term loan of a sum of

Rs.4 crores. It was further represented on behalf of the respondent that, the said loan would be repayable with interest @15% per annum.

Additionally, the respondent was obliged to secure the said loan. Pursuant to the aforesaid, the petitioner on 12 June, 2015 remitted a sum of Rs.4

crores to the respondent by Real Time Gross Settlement (RTGS). The respondent duly received the said amount. Thereafter, the parties entered into a

Memorandum of Understanding dated 13 June, 2016. The Memorandum of Understanding records that in view of the representation and assurances

made by the respondent, the petitioner had lent and advanced a sum of Rs.4 crores to the respondent repayable with interest @15% per annum for a

period of six months. The agreement also records that, by way of security, the respondent had provided a flat of built up area of approximately 7060

sq.ft. in a building named â??Ideal Unique Centreâ??. The Memorandum of Agreement is signed by both parties. As and by way of additional security,

the respondent also forwarded post-dated cheques to the petitioner particulars whereof are set out in the petition.

3. Subsequently, the respondent failed to honour its obligation under the Memorandum of Agreement and sought for extension of time to repay the

loan. Pursuant to such requests, the parties entered into another Memorandum of Understanding dated 13 June, 2016, whereby the parties agreed that

the loan would be repayable within a further period of six months from 13 June, 2016. The respondent also requested the petitioner to replace the

aforesaid cheques in lieu of handing over of fresh cheques. Additionally, the respondent also forwarded two more cheques for the interest component.

Thereafter, the respondent failed, neglected and refused to repay any amount to the petitioner either on account of principal or interest within the

stipulated time period. On 1 June, 2018, the respondent made payment of sum of Rs.13,53,707.83/- on account of accrued interest and after deducting

Tax Deducted at Source. In view of the repeated defaults of the respondent, the petitioner was compelled to present the post-dated cheque which

was lying as security with the petitioner. However, the same was dishonoured for insufficiency of funds. On 6 September, 2018, the respondent

deposited an aggregate sum of Rs.4,89,863/- towards Tax Deducted at Source to the credit of the petitioner. Upon dishonour of the cheque dated 1

July, 2018, the respondent furnished a substitute cheque dated 1March, 2019 which was also dishonoured for insufficiency of funds. Thereafter, by a

demand notice dated 15 April, 2019 the petitioner called upon the respondent to make payment of the entire loan amount alongwith accrued interest.

4. On 1 October, 2019, the respondent issued another cheque bearing No.003937 dated 1 October, 2019 from ICICI Bank for a sum of Rs.4 crores in

favour of the petitioner. Upon presentation of the said cheque on 3 October, 2019, the same was also dishonoured due to insufficiency of the funds.

Despite repeated requests and assurancesthe respondent has refused to make any payment either on account of principal or interest. Hence this suit.

5. The petitioner has also filed a criminal complaint being Complaint Case No.CN-1272/2019 before the Chief Metropolitan Magistrate at Calcutta.

The petitioner has also instituted a proceeding under Section 7 of the Insolvency and Bankruptcy Code, 2016 against the respondent before the

National Company Law Tribunal, Calcutta Bench which is still pending.

6. In this application, the petitioner has prayed for the following reliefs:

a) A judgment and decree on admission to the tune of Rs.6,27,72,055/- (Rupees Six Crore Twenty Seven Lakhs Seventy Two thousand and Fifty Five

only) particulars whereof are as mentioned in paragraph 24 hereinabove;

b) Injunction restraining the Respondent from encumbering, disposing off, creating third party rights, or in any manner whatsoever dealing with in

connection with property situated at Ideal Unique Centre unit number 4A, 4th floor, 10 East Topsia Road, Police Station Tiljala, Kolkata 700046;

c) The Respondent be directed to show-cause why the Respondent shall not be directed to furnish security to the tune of Rs.6,27,72,055/- (Rupees Six

Crore Twenty Seven Lakhs Seventy Two thousand and Fifty Five only);

d) In the event, the Respondent failing to show-cause, or not showing sufficient cause, the Respondent be directed to furnish security for a sum of

Rs.6,27,72,055/- (Rupees Six Crore Twenty Seven Lakhs Seventy Two thousand and Fifty Five only) or for such other sum as this Honâ??ble Court

may deem fit and proper in favour of the Petitioner;

e) The Respondent be directed to file and affidavit of assets relating to their fixed and other assets, properties and bank accounts;

f) All assets and properties of the Respondent as mentioned in paragraph 5 and such further assets as may be disclosed by the Respondent be

attached;

g) Ad-interim orders in terms of the prayers made herein above;

h) Costs of and incidental to the proceedings;

7. It is submitted on behalf of the petitioner that it is an admitted position that the respondent has duly received the entire sum of Rs.4 crores paid by

the petitioner to the respondent. The petitioner has also relied on the post-dated cheques both for the principal component as well as for the interest component furnished by the respondent to the petitioner, as an admission of the respondentâ??s liability. The petitioner also relies on a letter dated 13

June, 2016 whereby the respondent has in addition to the Memorandum of Understanding dated 13 June, 2016 unequivocally agreed to secure the loan

both by way of post-dated cheque and by way of immovable security. The petitioner also relies on the confirmation of accounts counter-signed by the

respondent categorically confirming the respondentâ??s liability both towards principal and towards interest. The petitioner also relies on the post-

dated cheques dated 1 October, 2018 and 1 October, 2019 respectively for an aggregate sum of Rs.4 crores, each signed by the respondent.

8. On behalf of the respondent, it is contended that, this suit is not maintainable before the Commercial Division of this Court. In this context, it was

submitted that the dispute raised in the instant suit is not a â??commercial disputeâ?? within the meaning of Section 2(c) of the Commercial Courts

Act, 2015. It is submitted that the suit proceeds on the basis as if the transaction between the parties was a pure and simple loan transaction and the

same does not constitute a â??commercial disputeâ?. In this connection reliance was placed on an unreported judgment delivered by a Single Judge in

Ladymoon Towers Private Limited Vs. Mahendra Investment Advisors Private Limited dated 13 August, 2021. Accordingly, it is contended that the

suit is not maintainable before the Commercial Division of this Court and should treated as an Ordinary Civil Suit which ought to have been filed in the

Original Side of this Court. It is further contended on behalf of the respondent that, no copy of the plaint has yet been served on the respondent and

hence, there has been no compliance with the mandatory provision of Order 39 of the Code of Civil Procedure, 1908. It is also contended on behalf of

the respondent that in view of the judgement reported in Narsingh Ispat Udyog Pvt. Ltd. vs. Jwala Cock Pvt. Ltd. (2021) SCC OnLine Cal 3009 this

Court has no jurisdiction to grant any order in respect of an immovable property situated outside the jurisdiction of this Honâ??ble Court. It is also

contended on behalf of the respondent that in view of provisions of Order 13A and Order 37 of the Code of Civil Procedure, 1908 this application is

premature and is liable to be rejected.

9. In reply, it was contended on behalf of the petitioner that the decisions cited by the respondent are inapposite and distinguishable to the facts and

circumstances of the present case. In Ladymoon Towers Private Limited Vs. Mahendra Investment Advisors Private Limited (2021) SCC OnLine

Cal 2082, the learned Judge had arrived at a finding that the loan transaction was a friendly loan and was not on the basis of any document. However,

in the facts of the instant case, the disputes raised by the petitioner falls within the scope and ambit of Section 2(c) of the Commercial Courts Act,

2015 read with Explanation (a). Hence, there is no question of this suit not being maintainable before the Commercial Division of this Court.

10. At the outset, it is well settled that the object of Order 12 Rule 6 of the of the Code of Civil Procedure is to obtain a speedy judgment at least to

the extent of the admission of the defendant. This Rule ensures that if there is no dispute between the parties and if there is on the pleadings or

otherwise such an admission, the plaintiff is entitled as a matter of right to obtain at once a judgment to the extent of the admission. The Rule also

contemplates that either party at any stage of the suit may obtain judgment or an appropriate order to get rid off so much of the suit to which there is

no controversy. The Rule also confers a very wide discretion of the Court (Uttam Singh Duggal & Co. Ltd. vs. United Bank of India & Ors. AIR

2000 SC 2740). In Ravees Chandra Jain vs. Rajrani Jain (2015) 8 SCC 428, it was held that, Order 12 Rule 6 of the Code of Civil Procedure confers

a wide discretion on Court to pass a judgment at any stage of suit on the basis of admission of facts made in pleadings or otherwise without waiting for

a determination or any other question which arises for consideration in the suit.

11. I find that the suit is for recovery of money. The fact that the respondent has duly received a sum of Rs.4 crore from the petitioner is admitted,

indisputable and uncontroverted. It is also an admitted position that the respondent has repeatedly issued post-dated cheques in favour of the petitioner

acknowledging its liability that monies were due and payable by the respondent to the petitioner both towards principal and interest respectively. The

parties had also entered into a Memorandum of Understanding dated 13 June, 2015 and 13 June, 2016 respectively whereby the respondent

unequivocally, unconditionally and categorically undertook to repay the said amount of Rs.4 crores within a period of six months (with a grace period

of one month). The respondent has also signed the confirmation of accounts for the period 1 April, 2017 to 31 March, 2018 admitting that money was payable both on account of principal and interest. It is pertinent to mention that, the post-dated cheques furnished by the respondent were repeatedly

dishonoured by the bankers of the respondent on the ground that the funds were insufficient in the account of the respondent. The respondent also

provided a letter dated 13 June, 2016, as an undertaking for the post-dated cheques furnished by the petitioner to the respondent. Accordingly, I find

that the respondent has unequivocally, unambiguously and categorically admitted its liability to the petitioner.

12. I do not find merit in the argument of the respondent, that this is not a â??commercial disputeâ? within the meaning of the Commercial Courts

Act, 2015. On the contrary, I am of the view that this is a classic commercial dispute which falls within the ambit of Section 2(c)(i) of the Commercial

Courts Act, 2015 read with Explanation (a) of Section 2(c) of the Act. The case cited by the respondent of Ladymoon Towers Pvt. Ltd. (Supra) is

inapposite and distinguishable to the facts of the instant case. In the said decision, it was held that, the loan transaction was a â??friendlyâ? of

â??handâ? loan and had been advanced without execution of any documents or mercantile documents. I find that, in the facts of the instant case,

there is more than one document executed by the parties to support the conclusion that this is a commercial dispute and the respondent has admitted

its liability towards the petitioner both in respect of principal and towards interest. I also find that the facts of the instant case, pertain to an ordinary

transaction for realisation of monies and that there are mercantile documents which have been executed by and between the parties. I am also of the

view that the negotiations and documents which merchants undertake ought not to depend on the subtleties and niceties of law but are best left to their

commercial wisdom.

13. For the foregoing reasons, I am of the view that, the receipt of Rs 4 crores is unequivocally, unambiguously and indisputably admitted by the

respondent. The obligation of the respondent to pay interest @15% per annum is also admitted, indisputable and uncontroverted. In view of the

demand notice dated 15 April 2019, the obligation of the respondent to repay the principal sum including interest has also arisen. Thus, in my view

there are clear, categorical and unequivocal admissions of the respondent insofar as both the principal amount and the interest component are concerned. I also do not find any merit in the contention of the respondent that this application is either premature or not maintainable.

14. Insofar as the prayer for injunction is concerned, in view of the fact that the respondent has already dealt with the security furnished to the

petitioner in terms of the Memorandum of Understanding, liberty is granted to the petitioner to take appropriate steps for securing its claim, in

accordance with law, if so advised.

15. In view of the aforesaid, there shall be a decree on admission in favour of the petitioner and against the respondent for a sum of Rs.6,27,72,055/-

(particulars whereof appear from paragraph 24 of the petition). The respondent shall also pay to the petitioner costs of this application assessed at

Rs.1,00,000/-(One lac only).

16. With the aforesaid directions, GA/1/2021 in C.S 221 of 2021 stands disposed of.