
(2009) 08 DEL CK 0190

In the Delhi High Court

Case No : IA No. 5280 of 2003 in CS (OS) No. 1588 of 2001

R. Gowrishanker and Others

APPELLANT

Vs

Narain Jewellers

RESPONDENT

Date of Decision : 26-08-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 37 Rule 1, Order 37 Rule 2, Order 37 Rule 3(5), 151
Negotiable Instruments Act, 1881 (NI) — Section 78
Stamp Act, 1899 — Article 49

Citation : (2009) 08 DEL CK 0190

Hon'ble Judges : Manmohan Singh, J

Bench : Single Bench

Advocate : Ashish Dholakia and Adarsh Priyadarshi, for the Appellant; Anil Airi, Sadhna Sharma and Neha Kapur, for the Respondent

Judgement

Manmohan Singh, J.—By this order I shall dispose of I.A No. 5280/2003 filed by the defendant under Order 37 Rule 3(5) read with Section 151 of the Civil Procedure Code, 1908 praying for grant of unconditional leave to defend.

2. The plaintiffs filed the present suit for recovery of Rs. 71,23,175/-. The brief facts of the case are that the plaintiffs are the children of Late Sh. G. Ramaswamy, who died on May 22, 1999 leaving behind the plaintiffs as his legal heirs. It is submitted that the defendant had, during the life time of Sh. G. Ramaswamy, taken a loan of Rs. 30,00,000/- from the latter through four cheques and the said loan was to carry interest @ 24% p.a.

3. The defendant issued six cheques totaling Rs. 2,00,000/- towards the interest on this loan to the plaintiffs' father during his life time, but all these cheques were dishonoured. Thereafter, the defendant executed a promissory note on July 29, 1998 in favour of Late Sh. G. Ramaswamy, promising to pay on his demand or on order, a sum of Rs. 35,40,000/- with interest @ 24% p.a with quarterly rests. Of this amount, Rs. 30,00,000/- was the principal amount and Rs.

5,40,000/- was the interest overdue as on July 29, 1998.

4. The plaintiffs submit that after the demise of Sh. G. Ramaswamy, they have become entitled to the said amount as per the deceased's last Will dated April 7, 1996 duly probated before the Madras High Court on August 5, 1999 in O.P No. 485/1999. The plaintiffs further submit that they issued a legal notice dated June 21, 2001 to the defendant demanding repayment of Rs. 71,23,175/- which is the amount accrued on the said promissory note with interest @24% p.a with quarterly rests till the quarter ending July 31, 2001.

5. The defendant, in the affidavit accompanying the present application, has submitted that the present suit does not fall within the four corners of Order 37 of the CPC as no debt is due to the plaintiffs. The defendant submits that he did not take any loan from the deceased Sh. G. Ramaswamy, neither in his individual capacity nor as Karta of M/s Narain Jewellers, HUF. The defendant has further submitted that neither the suit nor the summons have been duly signed or verified.

6. It is further submitted that the late Sh. G. Ramaswamy used to buy precious and semi-precious jewellery from the defendant by paying by way of advance which would then be adjusted at the time of handing over the jewellery so ordered. If any amount was due or payable by late Sh. G. Ramaswamy he paid it and if any amounts were found payable and due to him, the same were paid by the defendant. The relationship between the defendant and the deceased is stated to have been friendly.

7. In keeping with the said defense, the defendant submitted that the four cheques mentioned by the plaintiffs in the present suit were not given by Sh. G. Ramaswamy as loan but were given as advance payments against orders placed by him for jewellery items. Likewise, the cheques stated to be dishonoured were not paid as re-payment of any loan or interest thereon but were only towards adjustment of the price of jewellery sold to the deceased.

8. The defendant also submitted that the promissory note mentioned in the suit by the plaintiffs was never executed by him and that the said promissory note is forged and has been fabricated by using some blank signed papers, which might have come into late Sh. G. Ramaswamy's possession with receipts and other documents.

9. I have gone through the suit of the plaintiff and the affidavit filed by the defendant as well as other relevant annexures and documents. The defendant did not reply to the legal notice sent to it by the plaintiff. Both parties have submitted various decisions in support of their arguments. The plaintiff has submitted the following judgments laying down what constitutes a "good defense" in a suit under Order 37 of the CPC and the principles that are to be followed by the court while considering the question of granting leave to defend.

(i) Rajesh Kumar Aggarwal Vs. Punjab and Sind Bank and Others,

(ii) Bank of India and Anr. v. Madura Coats Ltd. 2009 (108) DRJ 107

10. The defendant has also raised a point as regards the requirements of a valid promissory note, emphasizing through reference to various judgments that for concluding that a person is, at a particular time the "holder" of a negotiable instrument, it has to be found that he was entitled in his own name to possess the instrument as also to receive or recover the amount due thereon. The plaintiff has cited a decision on this aspect which fits the facts and circumstances of the present case. The relevant portion of Padam Parshad v. Lok Nath AIR 1964 P&H 497 : V 51 C 162 is reproduced hereinbelow:

16. Lastly, another type of case arises where the holder is no longer alive and the debt on instrument still remains to be recovered from its maker or acceptor. We are of the opinion that in such a case it could not possibly be insisted in law or common sense that no suit whatsoever could be brought as the holder is dead or that no person other than the holder could give a discharge within the meaning of Section 78 of the Negotiable Instruments Act.

18. It will appear from the authorities that have been quoted above that the rule seems to be fairly well settled that an heir of a deceased holder can bring a suit on the basis of the promissory note to recover the amount due thereon to the deceased holder by reason of the fact that he succeeds to the estate of the deceased holder by inheritance.

11. It is a matter of fact that after the death of Sh. G. Ramaswamy his legal representatives issued a notice dated 26th June, 2001 to the defendant demanding repayment of the amount along with interest, which as on 21st June, 2001 has accumulated to Rs. 71,23,175/-. No reply to the notice was given by the defendant. The defendant has also not specifically denied the payment of Rs. 30 lakhs made by late Sh. G. Ramaswamy to the defendant although it has been argued during the course of the hearing that the defendant has only admitted the signatures on the said pronotes. The defendant has also not denied the issuance of cheques by the defendant to Sh. G. Ramaswamy which were dishonoured subsequently. No justification has been given by the defendant as to under which account the said cheques were issued by the defendant.

12. The contention of the defendant that the suit does not fall within the ambit of Order 37 of the CPC as the plaintiffs are not holders of any promissory note within the meaning of Negotiable Instruments Act has no force. Learned Counsel for the defendant has not disputed the fact that an ordinary suit for recovery is maintainable by the legal representatives of the deceased. In view of the judgment cited by the learned Counsel for the plaintiff in the case of Padam Prakash (supra) where it was held that a suit filed by the legal representatives for recovery of amount is maintainable, one fails to understand why a suit under Order 37 would not be maintainable as the same falls clearly within the ambit of Order 37 CPC. The second contention of the learned Counsel for the defendant is that the promissory note was not sufficiently stamped and therefore, the same is

not admissible in evidence. Under Article 49 of the Stamp Act, 1899 duty chargeable in respect of the promissory note payable on demand exceeding the amount of Rs. 1,000/- is 25 paise. It appears that in the present case the promissory note is sufficiently stamped. This issue is also covered by the judgment of this Court in *Bharat Nidhi Limited Vs. Shital Prasad Jain*, wherein it has been held as follows:

Issue No. 2

Ex. P-3 is the purported promissory note for Rs. 2 lac bearing three revenue stamps of the denomination of 0.10 paise each. Under Article 49 of the Stamp Act, 1899 duty chargeable in respect of a promissory note payable on demand exceeding the amount of Rs. 1000/- is 0.25 paise. Obviously, Ex.P-3 is sufficiently stamped and is admissible in evidence. Issue is decided against the defendant.

13. In any event, the judgment in *Aman Gulyani Vs. Praveen Kumar*, comes to the rescue of the plaintiff. It was held therein that,

7. So far the contention that promissory note is not properly stamped, the same in my considered opinion is also without any merit, for it is settled law that even an insufficiently stamped document could be looked into by the Court after impounding the same in accordance with law. The suit was in the nature of a summary suit and, therefore, at that stage, in my considered opinion, the Court could look into the contents of the said document, for the said document could not be made invalid merely because the same was not properly stamped.

14. The third contention of the Learned Counsel of the defendant that the Will of late Sh. G. Ramaswamy which was probated by the Madras High Court did not refer to the alleged debt owned by the defendant also has no force as on page 3 of the Will it is categorically stated as under:

As far as possible I have included all the properties available and if any property moveable or Immoveable are left out by mistake or otherwise or acquired subsequently the same shall be taken by them equally.

It is immaterial whether the said outstanding amount is shown or not in the Will of G. Ramaswamy due to the above mentioned excerpt. Further, the Will was executed on April 7, 1996 and the loan installments commenced in November 1996. The loan did not even exist at the time that the Will was executed.

15. In the Full Bench decision of the Punjab and Haryana High Court in the case of *Padam Prakash (supra)* it is also held that since the suit can be brought on a promissory note by the legal heirs of the holder of the promissory note no such certificate is necessary to maintain the suit. Therefore, the argument of the defendant has no force under the said circumstances. The defendant has also not denied the factum of his signatures on the promissory note as well as the issuance of cheques to Mr. G. Ramaswamy and the later dishonouring of the same cheques. The submission of the defendant, after admitting the signatures

on the promissory note as well as the issuance of cheques, that the promissory notes are forged documents and that the signatures were obtained on blank papers with other vouchers and receipts is also not sustainable. The suit for recovery of the amounts on the basis of promissory note is maintainable under the provisions of Order 37 Rule (1)(2)(a) CPC and the plaintiffs are entitled to bring the suit on the basis of promissory note under the said circumstances.

16. Another submission of the defendant is that late Sh. G. Ramaswamy and the defendant had dealings between them pertaining to the sale and purchase of gems and jewellery and that the cheques mentioned in the plaint are only indications of the adjustment of the amounts owed between them. I accept the contention of the plaintiff that there is not a single voucher/receipt/acknowledgement/running account/purchase order/bill or the like produced by the defendant to establish any such details. Therefore, in the absence of relevant documents the mere allegation of the defendant in the leave application cannot be accepted and the said defense is accordingly rejected. As far as the defense of forgery of the pronote is concerned, the defendant has not disputed that the promissory note in question bears his signatures. The defendant has also not given any explanation as to how the deceased stumbled upon signed blank papers with the defendant's signature on revenue stamp. It appears that the said defense raised by the defendant in the application for leave to defend is nothing but moonshine. In the case of Rajesh Kumar Aggarwal Vs. Punjab and Sind Bank and Others, a Division Bench of this Court quoted with approval another judgment of this Court held as under:

6.

...But wherever the court finds and satisfied that there is absence of substantial defence or that the defence is frivolous or vexatious, the court would decline leave to defend to the applicant. The use of the expression "good defense "must be understood so as to include in its ambit reasonable triable issue and a bonafide stand. The good defence of the defendant has not to be a defence which is illusory or shown to be "ex facie unbelievable". Grant of leave to defend thus would be relatable to the content and value, in terms of law of the defence put forward by the defendant. The legislative intention in introducing the word "good" is to emphasise the need of a bonafide defence which is acceptable within the afore corners of law. A dispute raised for the sake of dispute or denial for the sake of denial with intent to delay the proceedings would be a category of cases which cannot fairly fall under this category. It is the duty of court to amplify act of justice rather than jurisdiction or authority. It is a matter of common knowledge that denial by a party is the easiest method of delaying the proceedings before the Court and in fact without being subjected to rigors of high cost an penal loss. A plea which is put forward by the defendant should go to the root of the liability and must raise an issue which in law would be triable.

17. From the overall surrounding circumstances of the matter it appears that the defenses raised by the defendant are merely moonshine and it also appears that

prior to the filing of the suit a notice was issued by the plaintiff but was not replied to by the defendant and none of the defenses now being raised by them were raised at that time. In the case of Metropolis Travels and Resorts (I) Pvt. Ltd. Vs. Shri Sumit Kalra and Another, a Division Bench of this Court has observed as follows:

13. There is another aspect of the matter which negates the argument of the respondent and that is that the appellant served a legal notice on the respondent vide Ex. PW-1/3. No reply to the same was given by the respondent. But in spite of the same no adverse inference was drawn against the respondent. This Court in the case of Kalu Ram v. Sita Ram 1980 RLR 44 observed that service of notice having been admitted without reservations and that having not been replied in that eventually adverse inference should be drawn because he kept quiet over the notice and did not send any reply. Observations of Kalu Ram's case (supra) apply on all force to the fact of this case. In the case in hand also despite receipt of notice respondent do not care to reply nor refuted the averments of demand of the amount on the basis of the invoices/bills in question. But the learned trial court failed to draw inference against the respondent.

18. I have gone through the pleadings as well as the documents on record and I am of the considered opinion that the issues raised by the defendant are not triable issues in the least as the defendant has no valid defense or evidence for any of his submissions, therefore, leave to defend cannot be granted in the present circumstances as the defendant has failed to satisfy this Court on that account or disclose any valid defense or triable issues. The submissions of the defendant seem concocted and frivolous at the very outset. The copy of the promissory note executed in favour of the deceased does not seem fabricated, contrary to the defendant's allegations as regards the same. The application is accordingly dismissed. In view of the dismissal of the application, I hereby decree this suit in favour of the plaintiff and against the defendant for a sum of Rs. 71,23,175/- together with interest from the date of filing of the suit till realization @ 9% p.a. with quarterly rests. Although the plaintiff has claimed the interest @ 24% p.a., I feel that 24% p.a. is very exorbitant and I am not inclined to grant the said rate of interest as prayed.

The application as well as the suit is disposed of in the above terms with cost.