
(2011) 04 DEL CK 0136

In the Delhi High Court

Case No : Regular Second Appeal No. 313 of 2006 and CM No. 13308 of 2006

Shri Rishi Raj

APPELLANT

Vs

Shri Ashok Ji Lall

RESPONDENT

Date of Decision : 20-04-2011

Acts Referred:

Citation : (2011) 04 DEL CK 0136

Hon'ble Judges : Indermeet Kaur, J

Bench : Single Bench

Advocate : Harish Malhotra and Rajender Aggarwal, for the Appellant; None, for the Respondent

Final Decision : Dismissed

Judgement

Indermeet Kaur, J.—This appeal has been filed against the impugned judgment and decree dated 14.8.2006 which had endorsed the finding of the trial judge dated 24.12.2004 whereby the suit filed by the Plaintiff Rishi Raj seeking specific performance of an agreement dated 07.7.1992 entered into between the Plaintiff and Defendant No. 1 has been dismissed; his prayer for permanent injunction had also been denied.

2. Plaintiff was engaged in the business of distribution, exhibition and exploitation of cinematographic films; he had negative and telecasting rights of various pictures under the name and style of Raj Rishi Films which was his sole proprietorship concern. Defendant No. 1 was the producer of film Lal Chunaria under the banner of Tipu Films. Vide agreement dated 07.7.1992 entered into between the Plaintiff and Defendant No. 1, Defendant No. 1 had agreed to transfer the negative rights of U-mastics of the said picture for a sum of Rs. 85,000/- to the Plaintiff. Rs. 5,000/- was to be paid on signing and the balance sum of Rs. 80,000/- was to be paid on the transfer of the negative rights and handing over of U-mastics of the said film on the terms and conditions contained therein. Plaintiff had made the initial payment of Rs. 5000/-. On request of the Defendant, Plaintiff made further payments of Rs. 50,000/-, in installments to

the Defendant No. 1. Plaintiff learnt that the Defendant No. 1 had also signed a similar agreement with Bharat Shah; on his own efforts Plaintiff was able to persuade Bharat Shah to cancel the said agreement with the Defendant No. 1; an amount of Rs. 7500/- was paid by Plaintiff to Bharat Shah on this account on behalf of the Defendant; this sum was also included in the sum of Rs. 50,000/- which had been paid by Plaintiff to Defendant No. 1. It is stated that the Defendant No. 1 had failed to perform his part of the agreement; Plaintiff was always willing to do so; suit for specific performance was accordingly filed.

3. Defendant had been served and appearance has been put in but written statement was not filed.

4. Plaintiff has examined himself as the sole witness. He had proved the agreement dated 07.7.1992 as Ex.PW-1/1. Trial judge on the examination of the said document and relying upon the Clause 3 of the same held that the Plaintiff had failed to make the balance payment of Rs. 80,000/-; in this view of the matter, he could not claim the transfer of the negative and U-mastic rights in his favor; suit of the Plaintiff was dismissed.

5. In appeal the judgment of the trial court was affirmed and it was noted that no effort was made by the Plaintiff to get the agreement executed; he had not showed his willingness to perform his part of the contract. The judgment of the trial court was upheld.

6. This is a second appeal. It has been admitted and on 01.10.2010 the following substantial question of law has been formulated:

Whether the impugned judgment dated 14.08.2006 dismissing the suit of the Plaintiff had misconstrued the agreement dated 07.07.1992 thereby amounting to a perversity? If so, its effect?

7. On behalf of the Appellant, it has been urged that the document Ex.PW-1/1 dated 07.7.1992 has been misinterpreted and misconstrued. It is submitted that Clause 3 of the agreement, on which reliance has been placed upon by the trial court, in fact, pre-supposes a simultaneous arrangement i.e. giving of balance sum of Rs. 80,000/- by the Plaintiff to the Defendant No. 1 and Defendant No. 1 in turn would hand over U-mastics to the Plaintiff; this clause cannot be read as if the payment has to be made first and then the negatives and U-mastics of the film are to be handed over to the Plaintiff. This document has been misinterpreted. Attention has also been drawn to the various communications including the legal notice dated 14.8.1995 (Ex.PW-1/11) sent by the Plaintiff to the Defendant No. 1 wherein it is stated that he is ready to make the balance payment to the Defendant. It is pointed out that the finding in the impugned judgment that the Plaintiff had made no such effort on his part is a mis-appreciation of the evidence; this amounts to a perversity and has raised a substantial question of law.

8. None has appeared for the Respondent in spite of service.

9. Record has been perused.

10. There were two Defendants. In the prayer, the Plaintiff has sought a decree against Defendant No. 1 of specific performance directing him to transfer the negative rights and hand over the U-mastics of picture Lal Chunaria lying with Defendant No. 2 in his favor; direction has also been sought against Defendant No. 2 to transfer the negatives in favor of the Plaintiff. Admittedly the Plaintiff has no privities of contract with Defendant No. 2; on a specific query on this point learned Counsel for the Appellant has conceded that he is not pressing any prayer against Defendant No. 2.

11. Agreement Ex.PW-1/1 has been scrutinized in detail by both the two fact finding courts below and in the view of this Court the findings returned do not in any manner call for any interference. The document has to be read as a whole. The mode of payment is contained in the first para of the agreement. Rs. 5000/- had been paid at the time of signing of the agreement; Rs. 80,000/- was to be paid at the time of transfer of the negative rights and handing over of U-mastics of the said film. Sub para/ Clause 3 of Ex. PW 1/1 has noted as follows:

On making the total payment of Rs. 85000/- as stipulated above, the transfer of the Negative Rights which include Picture and Sound Negative which also includes the transfer of all such rights which include in form of the Performing copy rights, in its story, songs and music etc. of the Rights and also any sort of royalty from All India Radio music company all any other such units in future period.

Clause 6 reads as under:

The First Party will not have any Title, Right interest or claim on the said picture when negative rights which includes picture and sound negative is transferred in Name of 2nd party but after making the full payment to the First Party as mentioned above whereas only 2nd party or its agents or sub-agents will enjoy all the benefits profits and realization from the said picture as soon as negative rights which includes picture and sound negative is transfer in the name of 2nd Party when full payment is made.

12. Perusal of the affronted clauses as also the body of the agreement clearly shows that only after the complete payment of Rs. 85,000/- is made by the Plaintiff to the Defendant; would the Defendant transfer the negative rights of the film Lal Chunaria in his favor. It is only after making the full payment to the Defendant would the Plaintiff enjoy the benefits and profits from the said picture therein; Clauses 3 and 6 read together clearly decipher this intent. This had rightly been noted by the courts below.

13. Mode of payment was admittedly the essence of this agreement. Admittedly till date only Rs. 50,000/- has been paid by the Plaintiff. The question of the Defendant transferring the negative rights and handing over the U-mastics of the film to the Plaintiff did not arise.

14. Agreement is dated 07.7.1992. The Plaintiff has proved his first letter dated 24.8.1993 to the Defendant stating that he is ready to make the payment to the Defendant; this documents is Ex.PW-1/12; it has been sent by ordinary post; neither the UPC nor the AD card has been proved; thereafter various communications Ex.PW-1/13, Ex.PW-1/14, Ex. PW-1/15 and Ex.PW-1/16 have been sent which are almost are verbatim calling upon the Defendant to receive the balance payment. Legal notice dated 14.8.1995 has been proved as Ex.PW-/11.

15. The impugned judgment, apart from the scrutiny of Ex.PW-1/1 had noted that in all these communications Plaintiff had never expressed his willingness to pay balance sum of Rs. 35,000/- (which even as per his own admission was due and payable by him) to the Defendant; all these documents refer to the balance payment in terms of the agreement; in none of these communications has the Plaintiff averred (as has been stated in the plaint) that a sum of Rs. 50,000/- has already been paid and the balance sum now remaining is Rs. 35,000/-. Trial judge had also correctly noted that Ex.PW-1/9 and Ex-PW-1/10, which was the cancellation of an agreement between Bharat Shah and Defendant No. 1 had not been proved in accordance with law; neither Ashok Ji Lall nor Bharat Shah had come into witness box to prove these documents; same was the fate of Ex.PW-1/10 which was a unilateral declaration by Defendant No. 1 Ashok Ji Lall. This was also proved through the testimony of PW-1. It was also not the case of the Plaintiff that Ex.PW-1/10 addressed to the Plaintiff and was given to him. These two documents had also not been proved in accordance with law. Suit of the Plaintiff was rightly dismissed.

16. The impugned judgment suffers from no perversity. What is perversity has been explained by the courts time and again. For a second appeal Court to interfere in the findings of the two fact finding courts below it must be shown that the impugned judgment is based either on no evidence or what is not right, turned the wrong way, distorted from right, deviating from what is right, proper, correct etc. This is not one such case.

17. Substantial question of law is answered in favor of the Respondent and against the Appellant. There is no merit in the appeal. The appeal as also the pending application is dismissed.