(2012) 07 DEL CK 0611

In the Delhi High Court

Case No : CS (OS) No. 154 of 1999

Smt. Sudesh Madhok and Another — APPELLANT

Vs

M/s. Lunar Diamonds Limited and Others — RESPONDENT

Date of Decision : 31-07-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 12 Rule 6, 145
Registration Act, 1908 — Section 17(1)(b)

Citation : (2012) 10 AD 99 : (2012) 4 BC 244

Hon'ble Judges : Valmiki J Mehta, J

Bench : Single Bench

Advocate : Akhil Sibbal with Mr. Kamal Gupta and Mr. Pradeep Chhindra, for the Appellant; Madan Gera, Advocate for defendant Nos. 1 to 4, Mr. Sandeep Sethi with Mr. Deepak Jain, Advocate and Mr. Karthik Ashok, Advocate for defendant No. 5, for the Respondent

Final Decision : Disposed Off

Judgement

Valmiki J Mehta, J.—By means of the present judgment, prayer of the plaintiffs to pass a money decree under Order 12(6) CPC against defendant Nos.2 and 3 in the suit is being heard and disposed of. Plaintiffs filed the subject suit for recovery of Rs. 1,31,07,607/- on the ground that at the request of the defendant No.1 moneys were advanced to defendant No.2 and for which both the defendant Nos.1 and 2 stood as co-obligants by signing the documents including the promissory note and a receipt. The method of advancing the moneys was that a Bill of Exchange was drawn by defendant No.2 on defendant No.1, and this Bill of Exchange was discounted by the plaintiffs by advancing a sum of Rs. 1 crore. The plaint thereafter makes averments with respect to the defendant No.1 paying an amount of Rs. 25 lacs and consequently the principal balance would be reduced to Rs. 75 lacs. There are averments in the plaint with respect to a mortgage having been created in favour of the plaintiffs by the defendant Nos.1, 3, 4 and 5 of the property bearing No.10-H, Vandana Building, Tolstoy Marg, New Delhi-110001 for securing the moneys advanced. The suit plaint in addition to claim of the principal amount of Rs. 75 lacs also claims interest @ 18% per annum and prays for a mortgage decree under Order 34 CPC to be passed in favour of the plaintiffs and against the defendants (viz defendant Nos.1,3,4 and 5) with respect to the mortgaged property.

2. At the outset, I must clarify that today learned counsel for the plaintiffs sought only a limited money decree against defendant Nos.2 and 3 to the suit and did not claim a decree against the defendant no. 3 under Order 34 CPC. The other aspects with respect to whether or not a mortgage was created of the Vandana Building property or whether the said property was in fact transferred to the plaintiffs in discharge of the debt as pleaded by the defendants in the written statement or the issues of whether the subsequent purchasers of this property who have filed the I.A. No.1243/2012 are the owners of the property; and if so under what terms and conditions as to any prior rights in the property of the plaintiffs, being disputed questions of facts would require issues to be framed and evidence to be led by the parties on such issues and thus such aspects are not being dealt with in the present judgment.

3. A reading of the plaint paragraphs 3 to 5 shows that by discounting of the Bill of Exchange the plaintiffs paid the amount of Rs. 1 crore. The Bill of Exchange of Rs. 1,03,84,000/- was drawn in favour of the plaintiffs by the defendant No.2 and accepted by the defendant No.1. There is included a component of interest in this figure of Rs. 1,03,84,000/- payable by the defendant Nos.1 and 2 to the plaintiffs inasmuch as admittedly the principal loan amount was Rs. 1 crore. Para 5 of the plaint refers to a deed of guarantee dated 13.2.1996 executed by defendant No.3 in favour of the plaintiffs.

A reference to the corresponding paras of the written statement shows that in response to para 5 of the plaint, the defendants (who filed a joint written statement) admitted the contents of para 5 to be correct i.e. of the defendant No.3 having stood as a guarantor under the deed of guarantee dated 13.2.1996. Though of course, in this para there is mention of discharge of liability on account of the fact that the Vandana Building property was said to have been given to the plaintiffs in discharge of the total claim however such transactions being not in accordance with law, as stated hereinafter, would be hence void. So far as paras 3 and 4 of the written statement in reply to paras 3 and 4 of the plaint which talks of giving the loan, it is not disputed that the Bill of Exchange drawn by defendant No.2 was accepted by the defendant No.1, and payment of moneys were made to the defendant No.2, by the plaintiff discounting the Bill of Exchange and thus the defendant No.2 was liable is not disputed. There are only general denials without denial of the specific averments of the plaint and hence there is no denial in the eyes of law inasmuch as it is not disputed that amount of Rs. 1 crore was received. The only specific defence which is laid out is that the liability stands discharged, and which is subsequently explained in the written statement to mean discharge by giving ownership of the Vandana Building property to the plaintiffs. Pleading of discharge is thus an acceptance of the factum of the loan having been taken.

The defendants have denied creation of the mortgage of the Vandana Building property in favour of the plaintiffs, and which is one of the causes of action in the plaint, and instead it is pleaded that the property was ''transferred'' and not mortgaged.

In replication, the plaintiffs re-affirm the creation of the mortgage and dispute the fact that Vandana Building property was given in full discharge of the liability of the plaintiffs. It is reiterated that a mortgage was created with respect to Vandana Building property in favour of the plaintiffs.

4. A reading of the aforesaid shows that the following conclusions can be drawn, and which emerge from the admitted position on record:-

(i) The amount of Rs. 1 crore was paid by the plaintiffs to the defendant No.2, and for which defendant Nos.1 and 2 stood as co-obligants.

(ii) The defendant No.2 drew out a Bill of Exchange for the sum of Rs. 1 crore and interest thereon totaling to Rs. 1,03,84,000/- and which bill was discounted by the plaintiffs. The defendant No.2 therefore as a drawer of the Bill of Exchange and defendant No.1 as the acceptor of the Bill of Exchange are liable to pay the amount to the plaintiffs.

(iii) The plaintiffs have already received back the amount of Rs. 25 lacs out of the principal amount of Rs. 1 crore.

(iv) There is inherent interest element on the principal amount of Rs. 1 crore inasmuch as the amount of Rs. 1,03,84,000/- had to be repaid for the amount advanced of Rs. 1 crore.

(v) The plea of the defendants that Vandana Building property was given to the plaintiffs in full discharge of the claim of the plaintiffs, is the plea which would be barred u/s 17(1)(b) of the Registration Act, 1908 inasmuch as there cannot take place transfer of immovable property unless there is a registered instrument evidencing the same.

(vi) Since the plaintiffs have original title deeds of this Vandana Building property, it will be an issue in the suit as to whether this property was mortgaged to the plaintiffs so that the plaintiffs can claim a decree under Order 34 of the Code of Civil Procedure, 1908 (CPC).

5. I may also at this stage take on record the statement of the counsel for the plaintiffs that for the present the money decree is claimed only with respect to the balance principal amount of Rs. 75 lacs and the interest payable thereon as against the defendant Nos.2 & 3 herein only, and, no decree is prayed for against the defendant No.1-company which has gone into winding up and a notice will have to be issued to the Official Liquidator before proceeding ahead with the claim against the defendant No.1-company. The plaintiffs claim a decree, besides against the defendant no.2, also against defendant No.3 who stood as a

guarantor under the deed of guarantee dated 13.2.1996. Therefore this judgment deals only with issues of passing a decree under Order 12 Rule 6 CPC against the defendant No.2 as the co-obligant with the defendant No.1, and the defendant No.3 as the guarantor.

6. In view of the conclusions drawn out above from the plaint, and the written statement, it is clear that it is admitted on record that Rs. 1 crore was advanced to the defendant Nos.1 and 2 by the plaintiffs discounting the Bill of Exchange drawn by the defendant No.2 in favour of defendant No.1. There is also an interest element inasmuch as for having advanced Rs. 1 crore, a sum of Rs. 1,03,84,000/- was repayable and the calculation of the excess amount shows that interest figure comes to 15% on thereabouts. Counsel for the plaintiffs restricts the claim of pre-suit interest at 15% per annum simple.

7. Counsel appearing for defendant Nos.1 to 4 and also defendant no.5 contended that no decree can be passed against defendant Nos.2 to 5 inasmuch as defendant Nos.2 to 5 have claimed discharge of their liability in the written statement filed, by pleading that the property at Vandana Building was transferred to the plaintiffs in discharge of their liability. This argument I reject because I have already observed that in view of Section 17(1)(b) of the Registration act, 1908 ownership of an immovable property cannot be transferred except by means of a registered instrument and admittedly there is no registered instrument evidencing the transfer of this property in favour of the plaintiffs. In fact, it is for this reason that the plaintiffs in the replication have denied the stand of discharge of liability by getting ownership of the Vandana Building property and has pressed the claim with respect to enforcement of the equitable mortgage against the Vandana Building property.

8. The object of Order 12 Rule 6 CPC is to ensure that there should not be prolongation of litigation once the main ingredients of cause of action with respect to passing of a decree are found to be admitted in pleadings or otherwise. In my opinion, in the present case it is clearly found to be admitted in the written statement of the defendants that defendant Nos.1 & 2 received the amount of Rs. 1 crore for which they have to return back the amount of Rs. 1,03,84,000/-, and that the defendant No.3 stood as a guarantor for such repayment..

9. I therefore pass a decree for a sum of Rs. 75 lacs alongwith interest @ 15% per annum simple from 13.2.1996 till filing of the suit and also pendente lite and future interest at the same rate in favour of the plaintiffs and against the defendant Nos.2 and 3 in the present suit. Plaintiffs are also entitled to costs of the suit in terms of the rules of this Court. Decree sheet be prepared accordingly.

10. I may finally note that the defendant No.5 during the pendency of the suit had given a bank guarantee of Rs. 2.25 crores of Punjab & Sind Bank at Sector -17C Chandigarh and which is on the record of this Court alongwith the index dated 14.12.2011. In terms of the bank guarantee, in case any decree is passed

against any of the defendants, then, the plaintiffs can enforce the decree by claiming payment under the aforesaid bank guarantee. In case therefore the judgment debtors, namely, defendant Nos.2 and 3 do not pay the amount under the present decree, then, plaintiffs for the amount decreed today will be entitled to enforce this bank guarantee which is in fact given as a surety in terms of Section 145 CPC. List the suit for further proceedings on 4th September, 2012.

