

‘REPORTABLE’
*** IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ EFA (OS) No. 8/2008

% Date of Decision : April 11, 2008

G.L. DIDWANIA Appellant
! Through : Mr. Sukumar Patt Joshi, Adv.
Mr. Pratap Shanker, Adv.

versus

\$ MINOO K. BHAGWAGAR Respondent
^ Through : Nemo.

CORAM:
HON'BLE MR. JUSTICE T.S. THAKUR
HON'BLE MS. JUSTICE ARUNA SURESH

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| (1) Whether reporters of local paper may be allowed to see the judgment? | Yes |
| (2) To be referred to the reporter or not? | Yes |
| (3) Whether the judgment should be reported in the Digest ? | Yes |

JUDGMENT
ARUNA SURESH, J.

1. Appellant had filed a suit under Order XXXVII of the Code of Civil Procedure being CS (OS) No. 440/2004 dated 22.3.2004 for recovery of sum of Rs. 21,37,394.33 (Rupees Twenty One Lacs Thirty Seven Thousand Three Hundred Ninety Four and Thirty Three Paise) along with pendent lite and future interest @ 3% per month from the date of filing of the suit till

realisation. Since the judgment debtor/defendant did not file any application for leave to defend, the claim of the decree holder was accepted vide judgment dated 11.10.2004 and a decree was accordingly passed. Against this judgment and decree, the judgment debtor filed a regular appeal being RFA (OS) No. 36/2007 and also Execution First Appeal against the Execution Petition filed by the appellant/decreed holder being EFA (OS) No. 10/2007. Both these appeals were disposed of vide common order dated 29.5.2007 thereby modifying the judgment and decree dated 11.10.2004 in the following manner:-

“With the consent of both the parties, the decree passed is modified and it is directed that interest shall be paid @18% per annum at simple rate on Rs. 10 lakhs, which shall be calculated w.e.f. 23rd March, 2001. The amount of Rs. 3.51 Lakhs which was paid by the appellant before filing of the suit and further amount of Rs. 9.62 lakhs shall be adjusted against the aforesaid calculations. This amount shall first be adjusted against interest due and interest shall be calculated in this manner. Appellant, who is present in Court, states that on the basis of revised calculations, amount remains to be paid shall be paid by him to the respondent within eight weeks. The amount shall be paid by means of a Demand Draft.”

2. The decree holder filed EA 341/2007 and 531/2007 in

execution petition No. 73/2005 which was pending before the learned Single Judge. Vide detailed order dated 14.12.2007, the learned Single Judge dismissed the execution petition holding that decree had been satisfied as the judgment debtor had paid the amount in compliance with order dated 29.5.2007 modifying the decree dated 11.10.2004 and the applications being EA Nos. 341/2007 and 531/2007 filed by the judgment debtor for recording the satisfaction of the decree passed against him as modified were allowed. Dissatisfied with the order passed by the learned Single Judge, the present appeal has been filed by the appellant/decreed holder.

3. It is urged by the learned counsel for the decree holder that the modified order dated 29.5.2007 has not been complied with by the judgment debtor, as he failed to pay the amount of Rs. 10 lacs along with interest @ 18% per annum within the stipulated period ending on 30.7.2007 and therefore, he is entitled to enforcement of the entire decree passed by the learned Single Judge on 11.10.2004 along with interest as awarded in the said judgment and decree. The pay order/manager's cheque drawn on HDFC Bank, Saket Branch dated 26.6.2007 allegedly sent by the judgment debtor vide

communication dated 26.6.2007 by registered post was never received by the decree holder. However, the decree holder received the payment by way of another bank draft bearing No. 031417 dated 26.10.2007 drawn on HDFC Bank Ltd. in the Court on 30.10.2007, and, therefore, since the judgment debtor failed to pay the balance amount within the stipulated period, the appellant was within his rights to ask for enforcement of the original judgment and decree and recover the balance decretal amount as per the judgment dated 11.10.2004.

4. We do not find any force in the submission made by the learned counsel for the appellant. The learned Single Judge while disposing of the execution petition and other miscellaneous applications filed in the same, rightly observed that a communication was sent on behalf of the judgment debtor to the decree holder dated 15.6.2007 for confirmation of the balance amount of Rs. 7,85,819.15 paise as due from the judgment debtor to the decree holder as per the modified decree dated 29.5.2007. The appellant does not dispute the correctness of the amount so calculated by the judgment debtor being the balance amount. The pay order/manager's cheque bearing No. 029375 dated 26.6.2007 for the said amount of Rs.

7,89,800/- drawn on HDFC Bank, Saket Branch was sent by the respondent to the appellant along with his communication dated 26.6.2007 by registered post. The acknowledgment receipt bears the signature of the decree holder indicating that the said communication along with the draft were delivered to the appellant on 28.6.2007. The respondent/judgment debtor also obtained a confirmation of delivery of the said letter dated 26.6.2007 sent by registered AD post from the head post master, Lajpat Nagar Post Office. The confirmation of delivery of this letter was sent by the postal authorities stating that the said registered letter with acknowledgment was duly delivered to the addressee on 28.6.2007. Therefore, the learned Single Judge rightly held that the appellant had received the payment on 28.6.2007 i.e. within the stipulated period in which the judgment debtor was required to pay.

5. It was contended by the judgment debtor that with a view to deliver the demand draft personally he had tried to contact Mr. Sukumar Pattjoshi, Advocate on record for the decree holder, but he remained unavailable. The judgment debtor also tried to contact the decree holder on mobile phone No. 9811086400 but the decree holder could not be contacted and

the decree holder's wife informed him that he had left the mobile phone at home. The decree holder has not disputed the correctness of the mobile number as given by the judgment debtor in his application for recording of satisfaction of the decree. As per the contentions of the judgment debtor, he also tried to contact Mr. N.K. Jawahar, a common link between the parties, but Mr. Jawahar had no instructions to accept the said payment. The second draft was tendered and handed over to the appellant in the Court with permission, to stop the payment of the earlier pay order/manager's cheque which was sent on 26.6.2007 vide registered AD cover to the appellant.

6. It seems that with an intention to enforce his decree as an afterthought, the appellant did not get encashed the pay order/manager's cheque sent on 26.6.2007 by the judgment debtor by taking a stand that he did not receive any communication dated 26.6.2007, though he failed to rebut the presumption of receipt of registered AD cover which arose against him under the present facts and circumstances especially when the address on the registered letter is not disputed by the appellant and is admittedly the correct address. The decree holder failed to point out any facts which may rebut

the presumption of service of registered letter on him. We cannot appreciate that the judgment debtor after having obtained a pay order from the bank would not send it to the decree holder taking a risk of paying the entire decretal amount.

6. The learned Single Judge therefore rightly held that the decretal amount as per the modified decree dated 29.5.2007 was paid by the judgment debtor to the decree holder before 30.7.2007. He rightly recorded the satisfaction of the decree and dismissed the execution petition. Therefore we find no merits in the present appeal and hence it is dismissed with cost of Rs. 5,000/- to be deposited in the Delhi Legal Services Authority at Patiala House.

(ARUNA SURESH)
JUDGE

(T.S. THAKUR)
JUDGE

APRIL 11, 2008
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