

* **HIGH COURT OF DELHI : NEW DELHI**

+ **I.A. Nos. 14472/2007 & 5651/2009 in CS(OS) No. 829/2002**

% Judgment reserved on : April 29, 2009

Judgment pronounced on : 1st July, 2009

NATIONAL HORTICULTURE BOARD

..... Plaintiff

Through : Mr. Harish Malhotra, Sr. Adv. with
Mr. Rajinder Kumar, Mr. Tanuj Kumar and
Mr. Sanjeev Singh, Advs.

versus

COSCO BLOSSOMS Pvt. Ltd. & ORS.

.... Defendants

Through : Mr. R.K. Modi, Adv. for Defendants
No.1 to 3
Mr. Mohit Mathur, Adv. with Mr. Shishir
Mathur, Advs. for Def. No.4/applicant.

CORAM:

HON'BLE MR. JUSTICE MANMOHAN SINGH

- | | |
|--|----|
| 1. Whether the Reporters of local papers may be allowed to see the judgment? | No |
| 2. To be referred to Reporter or not? | No |
| 3. Whether the judgment should be reported in the Digest? | No |

MANMOHAN SINGH, J.

1. The plaintiff has filed the suit under Order 37 CPC for recovery of a sum of Rs. 1,70,27,818/- which was alleged to be taken as loan by the defendant no. 1 for development of a horticulture project under the plaintiff's scheme. Other defendants are guarantors for this advance. The plaintiff was granted ex parte ad interim injunction vide order dated 17th April, 2002. The defendants were restrained from selling, disposing of, transferring, alienating moveable and immovable property owned at the project site on a plot of land

measuring 131 kannal 10 marla at Village Goyala, Sub Tehsil Tauru, District Gurgaon, Haryana (hereinafter referred to as 'the suit property').

2. The ex-parte ad interim injunction was made absolute vide order dated 20th May, 2002 and it was clarified that the restrained order will not apply to the agricultural produce of the land in question. The plaintiff, National Horticulture Board, is a Society registered under the Societies Registration Act, 1860 formed by the Government of India, Ministry of Agriculture, inter alia, for the purpose of promoting, developing and supporting Horticulture activities by rendering financial assistance to various institutions engaged in Horticulture activities including processing of fruits and vegetables and floriculture.

3. The defendant No.1 is a company registered under the provisions of the Companies Act, 1956 having its registered office at 301, AVG Bhawan, M-3, Middle Circle, Connaught Circus, New Delhi-110001. The defendants No.2 to 4 are the guarantors for defendant No.1 company.

4. The defendant No.1 made an application dated 11.08.1994 to the plaintiff requesting for financial assistance to finance its project for cut roses floriculture on the suit property.

5. The plaintiff vide its letter of intent/sanction dated 03.02.1995 agreed to lend and advance to the defendant No.1 by way of term loan a sum of Rs.100 lac in aggregate to finance defendant No.1's project and the loan agreement dated 16.02.1995 was entered between the parties.

6. Sanctioned loan amount of Rs.100 Lac was disbursed to defendant No.1 through Demand Draft on 01.03.1995 drawn on Indian Overseas Bank, NHB Extension Counter, Gurgaon.

7. In consideration of and as security for the soft loan and due payment thereof and as security for the service charges, the defendant No.1 had created hypothecation of movable property and mortgage of the immovable property lying at the suit property.

8. An irrevocable and unconditional personal guarantee dated 16.02.1995 was also executed by defendant No.2 to 4 in favour of the plaintiff for the due repayment of the loan and service charges and all other charges accrued in terms of the loan agreement.

9. Defendants No.2 to 4 also executed personal guarantee dated 16.02.1995 in favour of the plaintiff and revival letters dated 05.06.1997 and 31.12.1999 for the due repayment of all and every sum payable by the defendant No.1 company. It was mentioned in these documents that the defendants No.2 to 4 were personally liable for all and every sum of money due and payable by the defendant No.1 company, and as such they are sued in their personal capacities as personal guarantors.

10. After availing the loan amount of Rs.100 Lac, the defendant No.1 failed to repay the loan amount on time.

11. The plaintiff, in view of the failure of the defendant No.1 in repaying the principal amount and service charges as per the schedule recalled the entire loan along with service charges and the penal interest vide legal notice dated 14.01.2002.

12. The plaintiff averred in the plaint that the defendants are liable to pay a sum of Rs.1,70,27,818/- along with interest @ 18% per annum from the date of filing of this suit.

13. However, during the pendency of the present suit, the parties to the suit, in conciliation among them, amicably settled the total outstanding

amount for one time payment of Rs. One Crore. The defendant No.1 in terms of the one time settlement has made the payment of the said amount of Rs. One Crore and the plaintiff has realised the payment against the full and final settlement of the above mentioned suit.

14. Since the subject matter of the suit has been settled between the parties out of the court to their mutual satisfaction, the plaintiff filed I.A. No.5651/1999 under Section 16 of Court Fee Act for refund of court fee of Rs.1,68,560/- which was paid by the applicant/plaintiff with the suit. He further sought withdrawal of the present suit.

15. Before passing the order of dismissal of suit on being settled, the defendant No.4 filed an application being I.A. No. 14472/2007 under Section 340 r/w Section 195 of the Code of Criminal Procedure, 1973 against the plaintiff and defendant No.2 and 3 for furnishing false evidence before this court.

16. It is alleged that the personal guarantee dated 16.02.1995 was obtained by deceit and playing fraud on the applicant. The revival letter dated 31.12.1999 is a fabricated document, the applicant has never put his signatures on the said document. The signature of the applicant/defendant No.4 had been forged by the defendants No.2 and 3 in conspiracy with the plaintiff to falsely implicate him in the present suit. It is submitted that present applicant had even got examined the photocopy of the revival letter dated 31.12.1999 by the handwriting expert, which shows that the signatures on the revival letter are not of present applicant.

17. It is further alleged that defendants No.2 and 3 fraudulently even got opened an account No. 051-761351-001 with HSBC Bank, Kasturba Gandhi Marg, New Delhi in the name of M/s. Chemical Sales Corporation which was

a partnership firm, wherein the applicant was also a partner and for the same, a criminal complaint was filed by the applicant seeking registration of FIR against the said persons. Vide order dated 14.09.2007, the learned Metropolitan Magistrate directed the concerned police station to register an FIR against the said accused persons.

18. The reply to this application has been filed by the plaintiff. It is specifically mentioned in the reply that neither the plaintiff or any of its officers have committed any offence as alleged by the defendant no. 4 nor they have filed any false evidence before this court at any stage of the proceedings.

19. It is further stated in the reply that the defendant no. 4/applicant was duly served and filed his application for leave to defend being I.A. No. 6444/2002 in July, 2002. In the said application, the defendant no. 4 has nowhere said that he had not signed the revival letter dated 31st December, 1999.

20. The objection has also been raised by the plaintiff that the present application is not maintainable as there is no question of directing to hold any enquiry under Section 340 Cr. P.C. Moreover, the subject matter of alleged forgery if committed by any party is prior to the date of institution of the suit, hence the application is to be dismissed.

21. In view of the facts explained above, it is also stated that the application filed by the defendant no. 4 is also not applicable to the present case, as there was no forgery of documents as alleged by the defendant no. 4 and there was no occasion for the plaintiff to disbelieve the genuity of the said document.

22. Similarly, on the same line, the defendant nos. 2 to 3 have filed the reply to the application filed by the defendant no. 4/applicant. In addition, it is mentioned in the reply that the said documents have been duly executed by the defendant no.4 and the same bears his signatures. He has absolutely no right whatsoever to deny the execution of the said documents and that the application, in fact, is an abuse of the process of law.

23. It is also stated that the present application has been moved by the defendant no. 4 in order to pressurize the defendant nos. 2 and 3 to withdraw the cases which they have filed against the defendant no. 4 in regard to his liability towards them in partnership firm and also to withdraw the complaint filed under Section 138 of the Negotiable Instrument Act against the defendant no. 4. Since the defendant nos. 2 and 3 have refused to withdraw the same, the application has been filed by the defendant no. 4.

24. In view of the above said facts and circumstances, I accept the contentions of the defendant Nos.2 and 3 and plaintiff. As per admitted facts, the alleged forgery if any committed by any of the parties is prior to the date of the suit, hence the present application is not maintainable in the pending suit being CS(OS) No. 829/2002. The plaintiff is entitled to withdraw the suit on the basis of the settlement arrived between the parties. The suit of the plaintiff is dismissed as withdrawn. The application of the defendant no.4 being I.A. No. 14472/2003 is, therefore, dismissed. However, the liberty is granted to the defendant no. 4 to file private complaint, if maintainable, before the appropriate forum in accordance with law against any party who allegedly committed forgery and the same shall be decided as per merit.

25. Since the plaintiff and the defendants No.1 to 3 arrived on the out of court settlement, by virtue of Section 16 of the Court Fees Act, 1870 the

plaintiff is entitled to the refund of the court fee to the tune of Rs.1,68,560/- from the Collector and a certificate be issued in this respect.

26. The suit and the pending applications are disposed of accordingly. No order as to costs.

JULY 01, 2009
nn

MANMOHAN SINGH, J.