

IN THE HIGH COURT OF DELHI AT NEW DELHI

FAO (OS) NO. 228 OF 2010

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Date of Decision: 16th April, 2010

SH. MAHENDRA VERMA
S/O LATE SH. RAJA RAM
VILLAGE & POST NAUKUCHIYATAL,
TEHSIL & DISTT. NAINITAL,
UTTRAKHAND.

. . . Appellant

through :

Mr. Sumesh Dhawan, Advocate with
Mr. Vibhu Bhakru and Mr. Digvinay
Singh Thakur, Advocates.

VERSUS

SH. SURESH T. KAILACHAND
S/O SH. TULSI DASS KALICHAND
40 ASHOKA AVENUE, SANIK FARM
NEW DELHI.

. . . Respondent

through:

Nemo

CORAM :-

THE HON'BLE MR. JUSTICE A.K. SIKRI
THE HON'BLE MR. JUSTICE AJIT BHARIHOKE

1. Whether Reporters of Local newspapers may be allowed to see the Judgment?
2. To be referred to the Reporter or not?
3. Whether the Judgment should be reported in the Digest?

A.K. SIKRI, J. (Oral)

1. The plaintiff (appellant herein) has filed suit for recovery on the original side of this Court. The averments made in the said suit are that the appellant and respondent herein entered into an oral agreement on 6th February, 2007 for the purchase/sale of property situated in District Almora for total consideration of Rs. 4,00,00,000/- (Rupees Four Crores). The appellant also paid an advance of Rs. 20,00,000/- (Rupees Twenty Lacs) and the final consideration was to be paid within six months from the time of execution of the sale deed. According to the appellant, he came to know that the respondent was trying to sell the suit property. He, thus, he immediately sent a legal notice dated 13th July, 2007. Respondent gave reply to this legal notice in which the respondent had taken the plea that since the appellant had not fulfilled his obligations under the said agreement, the advance of Rs. 20 lacs had been forfeited. Under these

circumstances, the plaintiff filed the aforesaid suit for recovery of Rs. 20 lacs and also claimed interest @ 18% p.a. as well as cost.

2. The defendant filed the written statement contesting the suit. After the completion of the pleadings, the plaintiff moved an application under Order XII Rule 6 of the Code of Civil Procedure, 1908 (hereinafter referred to as CPC) for seeking a decree on the basis of purported admission of the defendant in the written statement. This application has been dismissed by the learned Single Judge vide impugned order dated 16th February, 2010. Challenging that order, present appeal is preferred.

3. We may, at the outset, reproduce the relevant portion of the impugned order dismissing the application which gives an idea of the nature of defence pleas of the respondent herein:-

“...Admittedly there was no agreement in writing between the parties. Defendant has stated that next installment of Rs. 30 lacs had to be paid by February, 2007 which the plaintiff has not paid; he was failed to adhere to this schedule; he did not come forward to execute the sale deed which period expired on the 06.05.2007. As such the defendant had rightfully forfeited this amount; it was the plaintiff who was at fault. In the reply dated 30.7.2007 to the legal notice, the same has been reiterated.

To obtain an order under the aforesaid provision of law there must be a clear and unequivocal admission; it is clear that this is not so in the instant case. Defendant has stated that he is entitled to forfeit the amount of Rs. 20 lacs as the plaintiff had not adhered to the payment schedule; admittedly a sum of Rs. 30 lacs had not been paid by February, 2007 thereafter the sale deed could not be executed as the plaintiff had not come forward to pay the balance amount. Whether the defendant could rightfully forfeit this amount is a matter of trial and cannot be decided at this stage until the parties lead their respective evidence. Application is without merit; it is dismissed.”

4. Learned counsel appearing for the appellant submits that the respondent has not disputed the receipt of Rs. 20 lacs. He also submits that no doubt the respondent has taken the plea that the earnest money of Rs. 20 lacs was forfeited but this defence taken by the respondent is totally misconceived and moonshine. He submitted that the Court should have examined the matter from this angle and if the consideration was bestowed on this aspect, it was a clear case where the hollowness of the defence of the respondent would have been exposed.

5. Learned Counsel relies upon a Division Bench judgment of this Court in ***P.P.A. Impex Pvt. Ltd. Vs. Mangal Sin Mittal***, 166 (2010) DLT 84 in support of the proposition

that while considering an application under Order XII Rule 6 CPC, the principles which are applicable for grant of Leave to Defend can be considered and applied, he specifically refers to para-9 of the said judgment in this behalf which reads as under:-

“It appears to us that the approach to be taken under Order XII Rule 6 is akin to what has been enunciated by the Supreme Court in *Mechalac Engineers & Manufacturers v. Basic Equipment Corporation* Manu/SC/0043/1976 : (1976) 4 SCC 687 in the context of Order XXXVII of the CPC with regard to granting Leave to Defend a summary suit. This is that if a defence amounting to moonshine has been presented, it should be summarily dismissed by not granting Leave to Defend and by decreeing the suit forthwith. The Courts are already groaning under the weight of bludgeoning and exponentially increasing litigation. The weight will unvaryingly increase if moonshine defences are needlessly permitted to go to Trial.”

6. After going through the written statement filed by the respondent and the documents placed on record, we are of the view that the learned Single Judge rightly dismissed the application under Order XII Rule 6 CPC. To obtain a decree on admission, the plaintiff is under an obligation to show that there were unambiguous and unqualified admissions made by the defendant which would entitle the plaintiff to obtain a decree straight away without going for trial. In other words, it is for the plaintiff to prove that no trial in the suit is needed. We may also, quote for our benefit, the following observations of a Division Bench of this Court in **Delhi Jal Board v. Surendra P. Malik**, 104 (2003) DLT151 :

“9. The test, therefore, is (i) whether admission of fact arise in the suit, (ii) whether such admissions are plain, unambiguous and unequivocal, (iii) whether the defense set up is such that it requires evidence for determination of the issues and (iv) whether objections raised against rendering the judgment are such which go to the root of the matter or whether these are inconsequential making it impossible for the party to succeed even if entertained. It is immaterial at what stage the judgment is sought or whether admissions of fact are found expressly in the pleadings or not because such admissions could be gathered even constructively for the purpose of rendering a speedy judgment.”

7. In the present case as rightly taken note of by the learned Single Judge, the defendant had categorically stated that after the oral agreement was entered into on 6th February, 2007 and the appellant had paid the earnest money of Rs. 20 lacs, the appellant

was supposed to give next installment of Rs. 30 lacs by February, 2007 which the appellant did not pay. It is further the case of the respondent in their written statement that the appellant failed to adhere to the schedule and did not come forward to execute the sale deed which period expired on 6th May, 2007. There may be some dispute as to whether the deed was executed on 6th May, 2007 or end of May, 2007. However, effect of that can be seen only after the trial. We may also note at this stage that in the reply to the legal notice which was given much before the filing of the suit, the respondent had taken categorical stand alleging breach of the agreement on the part of the plaintiff and forfeiture of the earnest/advance money of Rs. 20 lacs on that basis. Whether ultimately the respondent would succeed in such a plea can be known only after the evidence is led by both the parties. Suffice it is to mention that this is not a case where there are unambiguous and unqualified admissions made by the respondent which would entitle the plaintiff to obtain a decree at this stage.

8. We thus, find no merit in the appeal and dismiss the same *in limini*.

A.K. SIKRI, J.

AJIT BHARIHOKE, J.

APRIL 16, 2010

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