

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

C.R.P No. 117/2010 & CM No. 11399/2010

% Judgment reserved on: 1st October, 2010

Judgment delivered on: 19th October, 2010

Sh. Vikram Jain,
S/o Sh. Vijay Kumar Jain
Proprietor of M/s Jain Metal Industries
R/o A-9, Oberoi Apartments
2, Shyam Nath Marg,
Delhi 110054

....Petitioner.

Through: Mr. K.C.Diwan, Advocate.

Versus

Sh. Jai Kumar Rakyan
S/o Late Sh. Mithu Mall Rakyan
R/o H.No. C-530, Defence Colony
New Delhi 110024

....Respondent

Through: None

HON'BLE MR. JUSTICE V.B. GUPTA

1. Whether the Reporters of local papers may be allowed to see the judgment? Yes
2. To be referred to Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

V.B.Gupta, J.

This revision petition under Section 115 of Code of Civil Procedure (for short as 'Code') has been filed against order dated 17th

May, 2010 passed by Additional District Judge, Delhi, whereby petitioner's application under Order 37 Rule 4 of the Code was dismissed.

2. Brief facts of this case are that, petitioner (defendant in the trial court) approached respondent (plaintiff in the trial court) through a common friend and induced him for giving a loan of Rs. 3,00,000/- (Rupees Three Lacs only) for a period of 22 months on interest @ 18% p.a.. Respondent upon the assurance of the common friend gave a friendly loan of Rs.3,00,000/- to the petitioner on 20th April, 2001 @ 18% p.a. for a period of 20 months. To secure the repayment of the aforesaid loan, petitioner issued a cheque bearing no. 429948 dated 31st December, 2002 for Rs. 3,00,000/-.

3. As far as the agreed rate of interest is concerned, petitioner paid interest @ 18% p.a. upto December, 2001 on the loan amount. Thereafter, petitioner stopped paying the interest. Finally, the cheque issued by petitioner was presented by respondent for encashment but the said cheque was dishonoured and was returned back with remarks "Insufficient Funds". Thereafter, legal notice was issued but the

petitioner did not pay the amount. Accordingly, respondent filed a suit for recovery of Rs.4,16,268/- under Order 37 Rule 4 of the Code.

4. Summons of the suit was issued to the petitioner but he did not appear during the prescribed period. Accordingly, vide order dated 8th July, 2004 suit of the respondent was decreed.

5. Thereafter, petitioner filed an application under Order 37 Rule 4 of the Code and while issuing notice on the said application, trial court stayed the execution proceedings and called upon the petitioner, vide order dated 16th May, 2008 to deposit 50% of the decretal amount in the court. Aggrieved by the said order, petitioner filed Civil Misc. (Main) No. 706/2008 before this Court.

6. Vide order dated 18th December, 2009, passed by this Court, that petition was dismissed and petitioner was also directed to pay the costs of Rs.15,000/- for six appearances before this Court. It was also ordered that if the costs are not paid, the same be recovered as part of the decree of the trial court.

7. Thereafter, vide impugned order application under Order 37 Rule 4 of the Code, for setting aside decree dated 8th July, 2004 has been dismissed by the trial court.

8. It is contended by learned counsel for petitioner that none of the original documents were filed before the trial court and in the absence of the same no decree could be passed under Order 37 Rule 4 of the Code. Trial court has committed a judicial error and as such impugned order is liable to be set aside.

9. Petitioner for reasons best known to him has not placed on record copies of any of the relevant documents along with this petition namely, copy of application under Order 37 Rule 4 of the Code as well as reply to it, if any.

10. Trial court in its impugned order observed as under:-

“First ground of the application is that the-then Court of Mr. Pradeep Chadda, Ld. ADJ, Delhi did not order to issue summons under Order 37 of CPC to Defendant for putting appearance. The Ahlmad issued summons on his own. This plea is baseless because it is mentioned on the 1st page of the plaint that it is a suit under Order 37 of CPC. Taking into account this writing, the then Ld. ADJ ordered issuance of summons to defendant. It is correct that it is not specifically mentioned in the order sheet that summons under Order 37 CPC be issued to the Defendant. The suit being under Order 37 of CPC and order that summons be issued to Defendant, means that the Ld. ADJ had directed summons to be issued under Order 37 of CPC.

The second ground is that he was served neither personally nor through registered A.D.

Endorsement has been made by the process server on summons that he found a person Ajay Jain on the given address and Ajay Jain claimed himself to be brother of Defendant. As per Order 5 Rule 15 CPC, if the Defendant is not at home, the summons can be served through any person who is residing with him. It is not the case of the Defendant that his brother Ajay Jain was not residing with him. In Cross-Examination, he stated that he cannot identify the signature of his brother. He stated that he cannot admit or deny that his brother Ajay Jain received summons on 14.01.2004. Defendant's plea that he should have been served either personally or through registered post is untenable because of Order 5 Rule 15 CPC.

The third ground is that the Ld. ADJ was on leave on 15.03.2004 and 21.04.2004 and so, he should have directed summons to be served afresh on Defendant. The is very unusual contention. Order sheet dated 14.01.2004 suggests that Defendant was required to be served on filing of PF/RC and the matter was adjourned to 15.03.2004: On 15.03.2004 the presiding officer was on leave and the matter was adjourned on 21.04.2004. On that day also the presiding officer was on leave. After leave, the officer held the Court on 04.05.2004. It was the duty of the Defendant to attend the Court on the next date when presiding officer was on leave on 15.03.2004 and 21.04.04. Order sheets of these two dates do not suggest that the Defendant appeared in the Court.

The last ground is that the Court should not have passed decree on the basis of Photocopies of the documents i.e. cheque of Rs. 3,00,000/-, Bank statement and legal notice etc. Ld. Counsel for the plaintiff and non-applicant argued that his client did not file the original documents because those were in

the file of the case U/s 38 of NI Act launched against the Defendant for dishonour of the same cheque. So, defendant could not justify this plea also.”

11. Since, original documents have already been filed in a case under Section 138 of the Negotiable Instruments Act pending against the present petitioner, question of filing of those documents in the suit does not arise.

12. As apparent from the record, respondent’s suit was decreed in 2004. Petitioner who had taken the loan of Rs.3,00,000/- from respondent more than 6 years back, has enjoyed the same without even paying the interest. This speaks about the malafide intention and conduct of the petitioner and shows that he has no desire to repay the amount of loan. This Court while dismissing CM (Main) of the petitioner has also observed that, petitioner has grossly abused the process of this Court. Order dated 18th December, 2009 passed by this Court read as under :-

“The detailed facts with respect to this petition are mentioned in the order dated 7th December, 2009 and need not be repeated. The counsel for the petitioner today states that he has not received any notice from the Trial court asking him to furnish security. The said stand of the petitioner is again contrary to the order dated 7th December, 2009. The petitioner was given opportunity on that date to appear before the Trial

Court on the very next date i.e. 8th December, 2009 to furnish security to the satisfaction of the Trial Court, as directed by this Court as far back as in the order dated 13th June, 2008. The petitioner instead of appearing before the Trial Court is taking a stand that a notice was required from the Trial court for the petitioner to appear before the Trial Court. The counsel for the petitioner has today also been asked as to what security will be offered by the petitioner or can be offered by the petitioner. The counsel for the petitioner on that also states that he has applied for certified copies of documents and is not able to show anything today also as to what security was intended to be given to the Trial Court, even after last opportunity in this regard was afforded on 7th December, 2009.

The facts as stated in the order dated 7th December, 2009 and herein above would show that the petitioner has grossly abused the process of this Court and has used the filing of the present petition merely as an excuse not to abide by the orders of the Trial Court. The petitioner has enjoyed the conditional stay granted by this Court for the last ½ years without complying with the conditions. Though the counsel for the petitioner today also urges that he is ready to address on the merits of this petition but the discretionary jurisdiction under Article 227 of the Constitution of India and especially considering the nature of the order impugned in this petition ought not to be exercised in favour of such a litigant who has abused the process of law and of the courts and has attempted to make a mockery thereof. The petitioner is not entitled to be heard also, for the said reason.

The petition is accordingly dismissed. The ex parte order dated 13th June, 2008 is vacated. The Trial Court to proceed with the consequences of failure of the

petitioner/defendant to comply with the condition on which the application of the petitioner/defendant for leave to defend the suit filed by the respondent/plaintiff under Order 37 of the CPC was allowed. The petitioner to also pay to the respondent the costs of Rs.15,000/- for six appearances before this Court. If the costs are not paid, the same be recovered as part of the decree of the Trial Court.”

13. It is well settled that frivolous litigation clogs the wheels of justice making it difficult for courts to provide easy and speedy justice to genuine litigants. It has also been observed in large number of cases that meritless litigation should be dealt with heavy hands. Any litigant who indulges in mindless litigation and unnecessarily waste the precious time of the Courts should not be spared. He must pay heavy costs for wasting time of the Court.

14. Since, there is no illegality, infirmity or error in the impugned order, the present petition being most bogus and frivolous and having no legal force, is hereby dismissed with cost of Rs.1,00,000/- (Rupees One Lac only). Out of this cost of Rs.1,00,000/-, petitioner shall pay Rs.50,000/- (Rupees Fifty Thousand only) as cost to Sh. Jai Kumar Rakyan, respondent (Decree Holder) by way of a demand draft in his

favour. Balance amount of the cost shall be deposited by way of cross cheque in the name of the Registrar General of this Court.

15. The cost amount should be deposited within a period of four weeks from today. After deposit of the cost by the petitioner, the respondent should be paid the same, only after expiry of the period of appeal/revision preferred, if any.

CM No. 11399/2010 (stay)

16. Dismissed.

17. List for compliance on 22nd November, 2010.

19th October, 2010
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V.B.GUPTA, J.