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* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Date of Decision: 22nd November, 2011

+ RFA(OS) 16/2011

PAAM ANTIBIOTICS LTD. Appellant
Through: Mr.Ravi Gupta. Sr.Advocate with
Mr.Mohit D.Ram, Ms.Poli Kataki and
Mr.Rahul Bakshi, Advocates

versus

SUDESH MADHOK Respondent
Through: Mr.P.D.Gupta with Mr.Kamal Gupta
and Mr.Abhishek Gupta, Advocates

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MR. JUSTICE S.P.GARG

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

PRADEEP NANDRAJOG, J. (Oral)

1. Vide impugned judgment dated 25.10.2010, IA No.5733/2010 filed by the plaintiff Smt.Sudesh Madhok, praying for a decree on admission has been allowed. Suit has been decreed in sum of ₹71,30,822/- with pendente lite and future interest @ 15% per annum against the first defendant which has been further burdened with counsel's fee, payable to the plaintiff, in sum of ₹75,000/-.

2. At the outset we may note that prior to the impugned order, decreeing the suit on admission being passed, issues

were settled on 10.9.2009; being 5 in number as under:-

- “1. Does the plaintiff prove entitlement to the decree for ₹71,30,822/- (Rs. Seventy one lakh thirty thousand eight hundred twenty two); OPP
2. Does the plaintiff prove entitlement to sell 2,50,000 shares registered in the name of M/s. Pushkar Trading Company Limited of the second defendant, allegedly pledged with it? OPP
3. Does the defendant prove that it had discharged its liability to repay the claim of the plaintiff by issuing cheques and/or that other amounts had been or were offered to be repaid by defendant No.2 in discharge of such liability? OPD
4. Does the defendant prove that plaintiff failed to mitigate its losses, if any? OPD
5. Relief”

3. It may strike the reader as to how come after issues were settled, decree on admission could be passed; for the reason : Issues are settled on questions of fact and law which need adjudication.

4. But, since we would be dismissing the appeal, to lessen the impact of the strike to the reader of our decision, we may point out that after the issues were settled, statement of Shri Mukesh Bhargava, Director of the first defendant, was recorded on oath by the learned Single Judge on 27.7.2010. The statement reads as under:-

“STATEMENT OF SH.MUKESH BHARGAVA, S/O SH.P.N.BHARGAVA, AGED 56 YEARS, R/O 26, BHARGAVA LANE, CIVIL LINES, DELHI-54 (ON S.A.)

1. I am Director in M/s. Paam Antibiotics Limited, the first defendant in this suit. It is a closely held group company. Earlier the main shareholders in the group were myself and my brothers. We later

separated, in 1997. I am authorized to depose in this case on behalf of the first defendant, M/s.Paam antibiotics Limited.

Q. Are you aware that the plaintiff advanced ₹2.20 crores?

A. Not exactly.

Q. What are you aware of?

A. I am aware that a sum of ₹50 lakh was advanced to M/s.Paam antibiotics Ltd. by the plaintiff.

Q. Was there an agreement between the plaintiff and your company that the amounts paid to Defendant No.1 was to be paid over to Defendant No.2?

A. I am not aware.

Q. When did the division between your company and the second defendant take place?

A. The division between M/s.Paam Antibiotics Ltd. and M/s.Paam Pharmaceuticals (Delhi) Ltd. took place sometime in September 1997.

Q. You have mentioned that you have signed the written statement.

A. Yes.

Q. Have you seen the statement in para 1(ii) of the written statement?

A. I have seen the statement in para 1(ii) of the written statement.

Q. How are you familiar with this agreement? Were you present?

A. (The witness is unable to answer the question).

Q. What is the basis for your statement in 2(iii) of the written statement?

A. These cheques were first received by the Accounts Department of M/s.Paam Antibiotics Ltd. and then transferred to M/s.Paam Pharmaceuticals (Delhi) Ltd. the very next date.

Q. Were the amounts received from the plaintiff by M/s.Paam Antibiotics Ltd.?

A. Yes. (The witness volunteers) Not even one rupee out of it was utilized by M/s.Paam Antibiotics Ltd., who transferred it to M/s.Paam Pharmaceuticals (Delhi) Ltd. This is within the knowledge of the plaintiff.

Q. What is the basis of knowledge about the

alleged transaction, as alleged by you?

A. This is because later on, they have accepted the cheques of M/s.Paam Pharmaceuticals (Delhi) Ltd.

Q. Was there ever a written agreement between M/s.Paam Antibiotics Ltd., M/s.Paam Pharmaceuticals (Delhi) Ltd. and the plaintiff that the amounts received by you would be returned by M/s.Paam Pharmaceuticals (Delhi) Ltd.?

A. I am not aware of such agreement since I was not looking after the accounts.

Q. Were you a Director in M/s.Paam Pharmaceuticals Ltd.?

A. Yes.

Q. Was there a common shareholding between M/s.Paam Antibiotics Ltd. and M/s.Paam Pharmaceuticals (Delhi) Ltd.?

A. Yes.

Q. Who were shareholders of the two companies?

A. M/s.Paam Pharmaceuticals (Delhi) Ltd. was a public limited company with widely held shareholder.

Q. When did you cease to be a Director of M/s.Paam Pharmaceuticals (Delhi) Ltd.?

In September 1997, even though I had resigned earlier.

A. Is it correct that the agreement alleged by you took place between the plaintiff, the first defendant and second defendant at a time when you were a Director?

A. Yes.

Q. Apart from the fact that the plaintiff accepted cheques from M/s.Paam Pharmaceuticals (Delhi) Ltd., is there any written intimation given by the first defendant to her in this regard?

A. It was a verbal discussion between the plaintiff and M/s.Paam Pharmaceuticals (Delhi) Ltd. I came to know about this discussion later.

Q. When was the complaint alleging commission of offences under Section 138 filed?

A. I think in 1998.

Q. How are you aware about the said complaint?

A. Though I was not familiar with the affairs of M/s.Paam Pharmaceuticals (Delhi) Ltd. after resignation, we were generally aware about the

cases filed against it.

Q. What is the basis of your knowledge about the agreement between Defendant No.2 and plaintiff about this TDS and all those matters which you have mentioned in these two paragraphs 1(ix) and 1(x) of the written statement?

A. Verbal discussion with the other Directors of M/s.Paam Pharmaceuticals (Delhi) Ltd.

Q. Did M/s. Paam Antibiotics Ltd. hold shares in M/s.Paam Pharmaceuticals (Delhi) Ltd.?

A. No

Q. Was the decision about division of the company and its assets referred by you recorded in any document or embodied in the order of a Company Court?

A. No, it was a mutual agreement between brothers who were shareholders and Directors of the company, who were common directors in both the companies.

Q. What do you have to say about the shareholding pattern of the companies.

A. The shareholding pattern changed from September 1997 in respect of both the parties."

5. The impugned order has relied very heavily upon the statement made as noted hereinabove.

6. Sudesh Madhok, the plaintiff averred in the plaint that the first and the second defendants were companies registered under the Companies Act and were carrying on business in manufacture and sale of drugs and chemicals.

7. That in the month of June 1996 the defendant No.1 represented to the plaintiff that it needed finances and the plaintiff agreed to advance a loan in sum of ₹50 lakhs which was advanced vide cheque No.670544 drawn on Bank of America, New Delhi. Acknowledging receipt of the cheque, defendant No.1 executed a promissory note Ex.P-1 and a receipt Ex.P-2, both dated 8.7.1999, and as per the promissory note defendant No.1 undertook to re-pay ₹50 lakhs together

with interest @ 15% per annum. She further averred that to secure re-payment of the principal sum and interest due, defendant No.1 tendered 3 cheques bearing Nos.721371, 721372 and 721373; totalling ₹52,33,877/- in the name of the plaintiff, which on presentation were dishonoured. Thereafter, defendant No.1 delivered 5 cheques bearing Nos.531589, 531590, 531591, 531592 and 531593 in the sum of ₹10 lakhs each drawn on P.N.B. to the account maintained by defendant No.2. She further averred that additionally, defendant No.1 pledged 2,50,000 equity shares of defendant No.2 held by M/s.Pushkar Trading Company Limited. Alleging that the 5 cheques when presented for encashment were dishonoured and that pertaining to the first month of interest payable TDS in sum of ₹36,986/- was deducted and credited to the account of the plaintiff by defendant No.1 and certificate issued, suit was filed alleging loan remaining outstanding. It hardly be emphasized that the suit amount was the loan of ₹50 lakhs, interest @ 15% till date of suit less tax deducted at source.

8. In the written statement filed by defendant No.1, under the signatures of its Director Shri Mukesh Bhargava, it was pleaded that the plaintiff had agreed to advance loan in sum of ₹2.20 crores to defendant No.2 but it was agreed further that first instalment of the loan in sum of ₹50 lakhs would be paid to defendant No.1 who in turn was to pay over the same to defendant No.2. It was pleaded that as per the said clear understanding, on receipt of ₹50 lakhs from the plaintiff, defendant No.1 transferred the amount to defendant No.2 which issued 5 cheques bearing Nos. 531589, 531590, 531591, 531592 and 531593 in the name of the plaintiff.

9. In this manner, the defendant No.1 refuted its liability.

10. It be highlighted that after pleadings were completed, when admission/denial of documents filed by respective sides was conducted, defendant No.1 admitted the promissory note being executed as also the original receipt executed, both dated 8.7.1996. The 2 documents were exhibited as Ex.P-1 and Ex.P-2. The TDS certificate in Form 16-A was admitted and exhibited as Ex.P-17.

11. It needs to be highlighted that in the written statement filed, the defendant No.1 has admitted having received ₹50 lakhs from the plaintiff. It has been admitted that the promissory note and the receipts were executed. But it is pleaded that there was a clear understanding that the loan was actually for the benefit of defendant No.2.

12. What was the date of the clear understanding? Who was present on behalf of defendant No.2 and defendant No.1 when the stated clear understanding was clearly understood? Nothing has been disclosed in the written statement.

13. From a perusal of the statement made on oath by Shri Mukesh Bhargava it is to be seen that he admitted having signed the written statement on behalf of defendant No.1 as its Director. When questioned, whether he was familiar with the so called agreement pleaded to in the written statement, he answered nothing. This has been noted by the Court.

14. It assumes importance to note that Shri Mukesh Bhargava admitted common shareholding between defendant No.1 and defendant No.2.

15. The Director of defendant No.1, who was the signatory to the written statement filed by defendant No.1, on oath, could throw no light on the so called oral understanding pleaded.

16. Loose and lacunic pleadings are insufficient for purposes of raising an issue. This was so held by the Supreme Court in the decision reported as AIR 1999 SC 1464 D.M.Deshpande & Ors. Vs. Janardhan Kashinath Kadam & Ors. It was also so held in the decision reported as 1987 (2) SCC 555 Ram Sarup Gupta Vs. Bishun Narain Inter College & Ors.

17. The fundamental principles of a pleading are to present the material facts with reference to the document relied upon by the parties so that a court is in a position to settle the issues between the parties. Failure to plead sufficient details would mean that the plea is insufficient. The two decisions bring out that in the absence of a concise statement of material facts, the mere raising of a plea is not enough for raising an issue on the question requiring an issue to be settled.

18. Order 12 Rule 6 would not be the sole repository of the power of a court of record to pass a decree in a suit. Even if issues are settled but it ultimately emerges at any stage of the suit that an admission has surfaced, a decree can be passed forthwith.

19. In the instant case we find that although issues were settled, but after the same were settled, when Shri Mukesh Bhargava, a Director of defendant No.1 was examined on oath on 22.7.2010, he could throw no light on the stated oral agreement statedly arrived at between the parties as per which ₹50 lakhs received by defendant No.1 was for the benefit of defendant No.2 and it was agreed that said defendant would re-pay the loan.

20. Thus, in the teeth of the promissory note Ex.P-1 which is a written acknowledgment by the defendant No.1, execution

whereof is not denied, it is obvious that the insufficient plea on which no issue was required to be settled, but was settled, became a non-issue when the Director of defendant No.1 made a statement on oath and as noted hereinabove.

21. This is the ethos and the signature tune of the impugned judgment, with which we agree.

22. As regards the plea urged that the plaintiff has admitted receiving 5 cheques in sum of ₹10,00,000/- each issued in her name by defendant No.2 for repayment of the loan amount and this means that the plaintiff has acknowledged that it is said defendant who has to pay the debt to her, all we have to say is that in India, whereas privity of contract is a must to create a jural relationship, privity of consideration is not essential and pertaining to a contract, consideration may flow to a contracting party from a third party, but at the instance of the other contracting party. This also explains the averments in the complaint filed by the plaintiff under Section 138 of the NI Act when the 5 cheques issued by defendant No.2 in her name were returned dishonoured by the banker of defendant No.2 on whom the cheques were drawn.

23. The appeal is dismissed and we leave the parties to bear their own costs.

PRADEEP NANDRAJOG, J.

S.P.GARG, J.

NOVEMBER 22, 2011
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