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**HIGH COURT OF DELHI: NEW DELHI**

**Judgment reserved on: January 18, 2011**  
**Judgment pronounced on: February 09, 2011**

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**C.S. (OS) No. 1374/2004 &  
I.A. No. 11522/2007**

% Mrs. Meena Chawla ... Plaintiff  
Through: Ms. Mala Goel, Advocate

versus

Prism Entertainment (P) Ltd. & Ors. ... Defendants  
Through: Mr. Ravi Gupta, Senior Advocate with Mr.  
Ankit Jain, Advocate for Defendant No. 1 &  
4  
Mr. C.Rama Krishna Prasad and Mr. B.  
Sujodhan, Advocates for Defendant No. 5.  
Nemo for remaining Defendants

**CORAM:**  
**HON'BLE MR. JUSTICE SUNIL GAUR**

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

**SUNIL GAUR, J.**

1. In this suit, Plaintiff seeks to recover a sum of Rs.43,31,250.00/- with stipulated interest @30% per annum as principal amount of Rupees thirty five lacs was purportedly advanced by her to Defendant No.1- Company in pursuance to the Agreement of 1<sup>st</sup> August, 2003, which was entered into by Defendant No. 2. as Director of Defendant No. 1-Company with the

the aforesaid amount on or before 6<sup>th</sup> August, 2004 with interest @30% p.a. or latest by 4<sup>th</sup> October, 2004.

2. Plaintiff's case, precisely is that after execution of the aforesaid Agreement of 1st August, 2003, Defendant No.1 through its Directors, Defendant No. 2 to 4 had orally confirmed to the Plaintiff that Defendant No. 5 – Film Laboratory have been informed in writing about the agreement in question with the Plaintiff and accordingly, the loan amount was paid by cheques whose details are given in paragraph no: 11 of the plaint. As per the Plaintiff, the said cheques were encashed and credited in the account of Defendant No.1. It is the specific case of the Plaintiff that she as financier had entered into the Agreement of 1st August, 2003 at Delhi with Defendant No.1 who was to produce coloured talkie motion picture tentatively titled as 'Eai Ki Sansar' and that the negatives and positives and other materials of the said picture were processed and were lying with Defendant No. 5 – Film Laboratory. According to the Plaintiff, vide letter of 26<sup>th</sup> April, 2004, it was conveyed to Defendant No. 5 – Film Laboratory that Plaintiff was holding first and paramount lien on the negatives etc. of the aforesaid film and Defendant No. 5 cannot unilaterally cancel the charge of the Plaintiff on the aforesaid negative etc. Since there was an apprehension that Defendant No. 5 – Film Laboratory would in violation of Agreement of 1st August, 2003, transfer the negatives of the said film to the third party, therefore, injunction to restrain Defendant No. 5 – Film Laboratory to do so, was also sought in this suit.

with Defendant No. 2 and her husband and is not binding on Defendant No.1. As regards the payment of Rs.30 lakhs, received by Defendant No.1 through cheques, the stand taken is that individual Directors of Defendant No.1 company have no power to call for loans and cannot individually seek to bind Defendant No.1 with any third party and in fact, there was no proper board resolution permitting Defendant No. 2 to seek loan and to create charge on the property of Defendant No.1. As per Defendant No.1, Mr. Sunil Saini, Chief Executive Officer of Defendant No.1 Company had confirmed to the management of Defendant No.1 that the Plaintiff was sending the funds on his behalf (Defendant No. 6 as well on behalf of Defendant No. 2) as their share of contribution in Defendant No.1 Company. When on 29<sup>th</sup> April, 2004, Defendant No.1 had sought the negatives/prints of the film 'Eai Ki Sansar' from Defendant No. 5 – Film Laboratory, its response was that there was a lien on this film in favour of the Plaintiff.

4. In nutshell, Defendant No.1 asserts that a fraud has been perpetuated by Plaintiff in collusion with Defendant No. 2 and her husband Defendant No. 6 and the alleged Agreement of 1st August, 2003 is ante-dated and therefore this suit deserves to be rejected with exemplary costs. Defendant No. 3 and 4 had proceeded to adopt the written statement filed by Defendant No.1.

5. Defendant No. 2 in her written statement asserted that in June, 2003, Mr. Rajat Dalmia, Chairman of Defendant No.1 Company, had

manage to get loan from the Plaintiff. However, signing of the Agreement of 1st August, 2003 by her as Director of Defendant No.1 Company is not denied but it is stated that she has already resigned and has been wrongly impleaded in these proceedings and so this suit is not maintainable against her.

6. Defendant No. 5 – Film Laboratory in the written statement claims that its status is that of a garnishee for keeping the negative and making its prints etc and is entitled to receive the payment for the same from Defendant No. 1. As regards the confirmation letter of 13<sup>th</sup> August, 2003, it is asserted that it has no legal sanctity as original confirmation letter is not obtained by the Plaintiff from Defendant No.1 Company from the answering Defendant. Though, Defendant No. 6 was not originally party to this suit but was later on impleaded and the written statement by Defendant No. 6 is on similar lines as that of his wife Defendant No. 2.

7. On the aforesaid pleadings, the following Issues were framed:-

- (i) *Whether this Hon'ble Court has the territorial jurisdiction to entertain and try the suit? OPD*
- (ii) *Whether the alleged agreement dated 1.8.2003 is not valid and legally binding upon the Defendant No. 1, 3 and 4? OPD*
- (iii) *Whether on a pure and simple money claim of the Plaintiff, any perpetual injunction restraining the Defendants can be granted, as prayed for? OPD*
- (iv) *Whether the Plaintiff is entitled to decree for*

8. Apart from the deposition of the Plaintiff (PW-1), there is evidence of Mr. Ramesh Chawla (PW-2), husband of the Plaintiff to corroborate the version of the Plaintiff. Defendant No. 3 – Ms. Ritu had stepped into the witness box as DW-1 and Mr. Rajat Dalmia, Chairman of Defendant No.1 Company has deposed as DW-3. Ms. Anjana Dalmia, Defendant No. 4 has come forward to depose as DW-2 to support the case of Defendant No.1 Company. Ms. Neetu, Defendant No. 2 and Mr. Sunil Saini, Defendant No. 6 have deposed as D2W1 and D6W1 to support the stand taken by them in their respective written statements. No evidence has been led by Defendant No. 5.

9. At the conclusion of the trial, counsel for Plaintiff, Defendant No. 1 and 4 and Defendant No. 5 alone had made their submissions and counter submissions and had meticulously referred to the evidence on record. On scrutiny of the evidence on record and upon consideration of the submissions advanced by the learned counsel for the contesting parties, the findings returned on the Issues framed are as hereinafter.

**Issue No.(i)**

10. No worthwhile arguments on this Issue of territorial jurisdiction were addressed on behalf of the Defendants and rightly so, because the Agreement of 1st August, 2003 (Ex.DW-3/X7) was entered into between the parties at New Delhi and it is this agreement, which gives cause of action to Plaintiff to institute this suit. Relevantly, jurisdictional clause 13 of

in terms of this Agreement (Ex.DW-3/X7), the territorial jurisdiction would be this Court to try this suit. This Issue is accordingly answered.

**Issue No.(iii)**

11. Whether in a suit for recovery of money, claim for permanent injunction can be raised, is not required to be determined in these proceedings because the Plaintiff at the final hearing of this suit has not pressed for the relief of permanent injunction and had confined the claim to the recovery of the suit amount. Therefore, nothing more is required to be said on this Issue.

**Issue No.(ii) & (iv)**

12. Since these two Issues are interconnected, therefore they are being taken up together. The existence of Agreement of 1st August, 2003 (Ex.DW-3/X7), which is the basis of the suit, is not in dispute. What is disputed, is that Defendant No. 2 as Director of Defendant No.1 Company, had no authority to enter into the Agreement in question and so, this Agreement is said to be not binding upon Defendants No.1, 3 and 4.

13. Article 53 of Articles of Association (Ex.DW-1/P1) of Defendant No.1 Company relied upon by the plaintiff, reads as under:-

**“XIII. Borrowing power**

*53. The Directors may from time to time, at their discretion, subject to the provisions of Section 292 of the Act borrow any sum or sums of money for the purposes of the company from Directors, members of the Company or other persons.*

*endorsing on behalf of the Company any notes, bills of exchange, or other negotiable instruments, or giving or issuing any other security of the Company, and/or by mortgage or charge of all or any part of the property of the Company or if its uncalled capital, if any, for the time being.”*

14. However, the powers of the Directors are spelt out in Clause 47 of the Articles of Association (Ex.DW-1/P1) of Defendant No.1 Company and as per this clause, the exercise of power by the Director is required to be validated in the General Meeting of the Defendant No.1 Company. Chapter X of Articles of Association (Ex.DW-1/P1) of Defendant No.1 Company provides that its Board of Directors are to appoint one or more managing/ whole time Directors of the Company and the exercise of powers by them is also required to be validated in the General Meeting of the Defendant No.1 Company. In fact, Section 292 of the Companies Act mandates that no Director can take any loan or advance for the company without a Board resolution having been passed in this regard and admittedly, there was no board resolution in favour of Defendant No. 2 to execute the Agreement of 1st August, 2003 (Ex.DW-3/X7). What Defendant No. 2 had said in her evidence in this regard deserves attention. It reads as under:-

*“Q. Do you have any authority from Defendant No.1 for signing this Agreement (Ex.DW-3/X7) ?*

*A. My husband told me that he had instructions from Mr. Rajat Dalmia that I had to go to Delhi for signing the said Agreement.*

*I did not ask my husband to show or give me*

15. Even the Plaintiff in her cross-examination has admitted that she had not asked Defendant No. 2 to show any board resolution, authorizing her to enter into Agreement of 1st August, 2003 (Ex.DW-3/X7). This is evident from the following deposition of the Plaintiff:-

*“Q. Did you ask for board resolution from Defendant No.1 authorising Defendant No. 2 to enter into Agreement in question?”*

*A. I have not asked from Defendant No. 2 as my husband was dealing with it.”*

16. It is a matter of record that deposition of Mr. Ramesh Chawla (PW-2) husband of Plaintiff is completely silent on this vital aspect. Plaintiff's counsel heavily relies upon Clause 8.2(vii) & (viii) Shareholder Agreement of 13<sup>th</sup> January, 2003, to derive the authority of Defendant No. 2 to enter into Agreement of 1st August, 2003 (Ex.DW-3/X7). The aforesaid provisions reads as under:-

*“8.2 Irrespective of whether the Articles of Association of the “COMPANY” contain provisions regulating the following matters, the parties declare and undertake that they shall all times ensure that:-*

*No resolution shall be passed by the Board or a Committee, at a meeting or by circulation, in respect of any of the following matters unless all the three parties to the COMPANY have consulted each others regarding the same and agreed to such resolution or otherwise assented to such decision.*

***Matters referred to above are:***

*viii) Pledging, mortgaging or otherwise encumbering any property or assets of 'COMPANY', tangible or intangible, otherwise than in ordinary course of business."*

17. Plaintiff's counsel seeks to interpret the aforesaid provision to mean that for any amount less than Rupees five million, no board resolution is required and any other Director of Defendant No.1 Company can enter into an Agreement like the Agreement of 1st August, 2003 (Ex.DW-3/X7). In my considered opinion, the aforesaid stand is completely mis-founded. Neither the Shareholder Agreement of 13th January, 2003 nor the Articles of Association (Ex.DW-1/P1) can override Section 292 of Companies Act, which prohibits a Director of the company to take or advance any loan on behalf of the company without a board resolution.

18. The Chief Executive Officer of defendant No.1- Company was Mr. Sunil Saini (D6W1), who is defendant No. 6 in this suit. Though this witness has stated in evidence that in August, 2003, defendant No.1 - Company had obtained a loan of Rupees thirty five lacs by way of cheques from the plaintiff, but he has been cross-examined in relation to an e-mail, admittedly sent by him on 14<sup>th</sup> January, 2004 (EX. DW3/X9) to defendant No.1- Company through its Chairman- Mr. Rajat Dalmia (DW-3) which clinches this Issue of the nature of transaction of Rupees thirty five lacs in question. The relevant portion of this e-mail (EX. DW-3/X9) reads as under:-

*"In my best efforts to complete and release the second*

*from outside financiers to help the progress of the film which was clarified again and again. However, as per the last meeting, I once again ensure you that I will try to clear this loan on the Company with my own efforts in distributing the film and if there is a slight shortfall at the time of release I request you and Sanjay once again to stand by me to ensure a smooth and successful release.”*

19. Another e-mail of 14<sup>th</sup> August, 2003 (Ex. D-6W1/X2) by Mr. Rajat Dalmia (DW-3) on behalf of defendant No.1- Company to its CEO- Mr. Sunil Saini (D6W1) which is an undisputed document, makes it clear that Mr. Sunil Saini (D6W1) had to bring in his contribution into defendant No.1- Company and it was told to him on behalf of defendant No.1- Company that he should bring his contribution from his own accounts and as a last and unwanted resolve, if he was to bring the money to defendant No.1- Company through third party, then he should give letter to defendant No.1- Company indemnifying the other Directors and Shareholders of defendant No.-1 Company from any liability that might arise out of bringing in the money through third party. Admittedly, no letter of indemnity was given by Mr. Sunil Saini (D-6) to defendant No.1-Company but it clearly emerges from the aforesaid communication that for the finance arranged by Mr. Sunil Saini (D-6), the defendant No.1- Company was not in any way responsible. More pertinently, the amount in question was clearly not a loan which was taken by defendant No.1- Company from the plaintiff but was the share of the contribution of defendant No. 6 which he had pumped

concluded, I find that the decision in '**Kumar Krishna Rohtagi and Others Vs. State Bank of India and Others**' 1980 (50) Company Cases 722 (Patna) holding that the Company cannot repudiate its liability to repay the amount, used for the benefit of the Company, even if it was taken without due authorization, has no application to the facts of the instant case, which is not a case of a loan transaction.

21. Reliance placed by Plaintiff's counsel upon decision in '**Sri Krishan Rathi vs. Mondal Bros. and Co. (P) Ltd. and Anr.**', AIR 1967 Cal 75, is of no avail, because Defendant No. 2 had no authority to enter into the Agreement (Ex.DW-3/X7) in question and therefore, the Agreement (Ex.DW-3/X7) cannot bind Defendant No.1 Company.

22. In the light of the evidence on record as referred to above, it is held that the Agreement (Ex.DW-3/X7) was not validly entered into by Defendant No. 2 on behalf of Defendant No.1 Company with the Plaintiff and so, it is not legally binding upon Defendants No.1, 3 and 4. Issue No.(ii) is accordingly answered.

23. Lifting of corporate veil becomes all the more necessary in the instant case. It is permissible to do so, in the light of the following observations made by the Apex Court in **Delhi Development Authority vs. Skippers Constructions Company (P) Ltd.**, AIR 1996 SC 2005:-

*"The concept of corporate entity was evolved to encourage and promote trade and commerce but not to*

*look at the reality behind the corporate veil so as to enable it to pass appropriate orders to do justice between the parties concerned.”*

24. As regards Issue No.(iv) of entitlement of the Plaintiff to recover the principal amount of Rs.35 lakhs is concerned, it stands firmly established from the evidence on record that the aforesaid amount was advanced by the Plaintiff to Defendant No.1 Company under a camouflaged Agreement (Ex.DW-3/X7) executed by Defendant No. 2, but infact, it was a share/contribution of Defendants No. 2 & 6 in the Defendant No.1 Company.

25. In the instant case, the logical conclusion which can be arrived at, on the basis of the evidence on record, is that what was projected by Defendant No. 2 to be a loan transaction, was in fact, a contribution by Defendant No. 2 and Defendant No. 6, (who happened to be husband-wife), in the Defendant No.1 Company and since Defendant No. 2 had no authority to enter into this purported loan transaction, therefore, Defendant No. 2 and 6 are squarely liable to pay the amount in question, i.e., the suit amount, to the Plaintiff. Resultantly, it is held that it is Defendant No. 2 and 6 alone who are liable to pay the suit amount to the Plaintiff. Issue No.(iv) is accordingly answered.

**Issue No.(v)**

26. Though in the Agreement in question, the stipulated rate of interest

**Issue No.(vi)**

27. Consequent to the findings returned, as aforesaid, this suit stands decreed for Rs.43,31,250/- with costs against Defendant No. 2 and 6 alone with interest of 8% per annum on the suit amount from the date of filing of the suit till realization and it stands dismissed qua the remaining Defendants. Decree sheet be drawn forthwith.

28. The suit of the Plaintiff as well pending application is accordingly disposed of.

**Sunil Gaur, J.**

**February 09, 2011**

pkb/rs