

* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ FAO(OS) No.128/2011 and CM Nos.4995/11, 7013/11

Modipon Limited ...Appellant through
Mr. Alok Krishan Agarwal,
Mr. Mayank Bughani &
Mr. Naveen Chawla, Advs.

versus

M/s. Singhal Transport Corpn. ...Respondent through
Mr. Manish Kaushik, Adv.

Date of Hearing : July 26, 2011

% Date of Decision: August 30, 2011

CORAM:
* HON'BLE MR. JUSTICE VIKRAMAJIT SEN
HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

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

VIKRAMAJIT SEN, J.

1. The present Appeal assails the Order of the learned Single Judge dated 27.1.2011 passed in IA No.1502/2009 in CS(OS) No.940/1009 granting the Appellant conditional leave to defend the Suit, subject to deposit of the Suit amount of ₹ 95,08,324/- with the UCO Bank, Delhi High Court Branch, New Delhi.

2. The Suit filed by the Respondent/Plaintiff is one for recovery of money under Order XXXVII of the Code of Civil Procedure, 1908 (CPC for short). It is not disputed by the

Appellant/Defendant that the Respondent/Plaintiff invested a sum of ₹ 70,00,000/- in the Fixed Deposit Scheme of Modipan Limited. As against this investment, twelve Fixed Deposit Receipts (FDRs) were issued to the Respondent/Plaintiff each mentioning an interest of fourteen per cent per annum. These facts are not disputed.

3. The cause of action is stated to have arisen when the Appellant/Defendant failed to pay interest with effect from 2006/2007. It was then, by letter dated 18.8.2008, that the Plaintiff/Respondent demanded the redemption of these FDRs along with the interest that had accrued thereon.

4. The learned Single Judge has repulsed the contention of the Appellant/Defendant pertaining to the absence of territorial jurisdiction of the High Court of Delhi. The relevant pleadings in the Suit are to the following effect:-

14. That this Hon'ble Court has jurisdiction to entertain the present Suit as the cause of action arose within the territorial jurisdiction of the Hon'ble Court. The applications for FDRs were deposited at Delhi. The payment of the interest was paid at Delhi, the payment of FDRs and interest is payable at Delhi, the Defendant at the relevant time had its Corporate office at Delhi. This Hon'ble Court, therefore, has jurisdiction to entertain and try the present suit.

5. To the contrary, the Appellant/Defendant has asseverated as follows:-

A. JURISDICTION: That no cause of action, if any, has arisen in Delhi because the Defendants are having registered office at Modinagar; the FDRs, as alleged, were made and issued from Modinagar; the amounts of the FDRs were allegedly deposited at Modinagar; and even the memo of parties and the documents filed by the Plaintiff on record show the registered office of the Defendant at Modinagar. The entire cause of action has arisen at Modinagar and the Plaintiff also has its office at Ahmedabad. No cause of action has arisen at Delhi, as such, this Hon'ble Court has no territorial jurisdiction to try and entertain the present suit. However, without prejudice to these submissions it is stated that assuming for the sake of arguments but not admitting that some part of cause of action has arisen at Delhi, the same is trivial. The actual site of cause of action is Modinagar. The Plaint is liable to be returned to the Plaintiff under Order VII Rule 10 of the Code of Civil Procedure for present in proper court.

6. In *ABC Laminart -vs- A.P. Agencies*, AIR 1989 SC 1239, the Hon'ble Supreme Court has clarified that a party may exclude all jurisdictions by restricting the determination of disputes to one place only, provided that place enjoys jurisdiction. In the present instance, the Plaintiff has pleaded that it has an office at Roshnara Road, Delhi from where the

subject transactions were completed with the Appellant/Defendant at its principal office in Delhi; and that interest as well as the TDS certificates were paid in Delhi, and the initial sum of ₹ 70,00,000/- was also deposited with the Appellant/Defendant in their Principal Office located in Delhi. No part of cause of action, therefore, has arisen in Modinagar, Uttar Pradesh. Merely because the Registered Office of the Defendant is located in that town is not sufficient to clothe that place with jurisdiction and to oust all other jurisdictions. Assuming that the Appellant had forwarded the sum of ₹ 70,00,000/- from its Delhi Office to its Registered Office, courts in Modi Nagar cannot get vested with jurisdiction because it is the Appellant's unilateral action. The Plaintiff can successfully assert that since no part of cause of action had arisen in Modinagar, courts located in that territorial jurisdiction do not enjoy jurisdiction. These technical objections are raised because there is apparently no defence on the merits.

7. No cogent documentary proof has been placed on record for the Court to arrive at the conclusion that the cause of action did not arise in Delhi. On the contrary, it is the case of the Appellant/Defendant that only a trivial cause of action had arisen in Delhi. In view of the pleadings that the monies were deposited with the Defendant in Delhi, interest was paid in Delhi

and all the payments were payable at Delhi, the learned Single Judge cannot be faulted for dismissing the objections regarding territorial jurisdiction of this Court.

8. We are also in agreement with the conclusion arrived at by the learned Single Judge that since interest was paid by the Appellant/Defendant to the Plaintiff/Respondent till 2006-2007 and the redemption of FDRs was asked for by the Plaintiff on 19.8.2008, the Suit was not barred by limitation.

9. The Appellant/Defendant admits that a sum of ₹ 70,00,000/- was invested with it by the Plaintiff/Respondent in twelve separate FDRs. It is further not disputed that interest on these FDRs was paid upto the period 2006-2007. The defence that is put forward is that these FDRs had not been renewed and the Defendant/Applicant had converted the FDRs amount into Unsecured Loan. This is palpably a moonshine defence as a unilateral action taken by the Appellant is not only dishonest but is certainly not binding on the Plaintiff.

10. Despite the fact that the learned Single Judge found the defence of the Appellant as illusory, sham and moonshine, the Suit was not decreed and instead conditional leave to defend was granted. The Appellant/Defendant has been directed to deposit the amount in terms of *Mechelec Engineers and Manufacturers -vs- Basic Equipment Corporations*, AIR 1977 SC

577 which has recently been followed in *Wada Arun Asbestos Private Limited -vs- Gujarat Water Supply and Sewerage Board*, (2009) 2 SCC 432 where Their Lordships have held that – “If the defendant has no defence or the defence is illusory or sham or practically moonshine then although ordinarily the plaintiff is entitled to leave to sign judgment, the court may protect the plaintiff by only allowing the defence to proceed if the amount claimed is paid into court or otherwise secured and give leave to the defendant on such condition, and thereby show mercy to the defendant by enabling him to try to prove a defence”. By adopting this course, the learned Single Judge has protected the position of the Defendant in the unlikely event that it succeeds in establishing its defence at the Trial. We would not have been surprised if the Plaintiff had filed an appeal with the grievance that having found that the Defendant’s defence was illusory, sham and moonshine, the Suit itself ought to have been decreed. Faced with an admission of debt (the Defendant has pleaded that the amounts claimed by the Plaintiff have been converted by it into Unsecured Loan), the Suit could have been decreed under Order XII Rule 6 of the CPC. This is invariably an important factor to be kept in mind even when dealing with a summary suit. Once the Court is satisfied that the claim falls within the actions envisaged under Order XXXVII of the CPC, if

admission of liability is ignored, the very purpose of Order XXXVII of the CPC will be rendered nugatory.

11. In our view, the Order passed by the learned Single Judge calls for no interference. The Appeal is devoid of any merit and is dismissed. Pending applications also stand dismissed.

(VIKRAMAJIT SEN)
JUDGE

(SIDDHARTH MRIDUL)
JUDGE

August 30, 2011
tp