

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment delivered on: 18.09.2012

+ **CS(OS) No. 575/2011 and IA No.14277/2011**

MANOJ KUMAR SHARMA Plaintiff

Through: Mr D.S. Paveriya, Adv.

versus

SAPNA & ANR Defendants

Through: Mr Virender Kumar and Mr D. Mishra, Adv.

CORAM:

HON'BLE MR. JUSTICE V.K.JAIN

JUDGMENT

V.K.JAIN, J. (ORAL)

This suit under Order 37 of the Code of Civil Procedure has been filed for recovery of Rs 60 lakh. The case of the plaintiff is that defendant No. 1, who is the wife of defendant No. 2, agreed to sell her land comprised in Mauza Siwana, Siraska, Tehsil Sohana, District Gurgaon, Haryana to him for a consideration of Rs.54 lakh and received that much amount by way of various cheques, detailed in para 5 of the plaint. An agreement dated 01.07.2008 was executed between the parties in this regard. Defendant No. 1 is alleged to have been executed a receipt, confirming the payment received from the plaintiff. It is further alleged that later on defendant No. 1 backed out of the agreement and refused to execute the sale

document in favour of the plaintiff. She agreed to return the amount received from the plaintiff along with Rs 6 lakh as compensation and for this purpose, defendants issued two cheques of Rs 30 lakh each from their joint account and the agreement dated 01.07.2008 was returned to them along with original receipt. The cheques, when presented to the bank, were dishonoured with the endorsement "funds insufficient". The plaintiff has now claimed that amount of the aforesaid two cheques in the present suit filed under Order 37 of the Code of Civil Procedure.

2. In the application for leave to defend, the defendants have alleged that no payment was ever made by the plaintiff to defendant No. 1 as consideration for a sale of the agriculture land on defendant No. 1 and there is no privity of contract between the parties to the suit. Defendant No. 1 has denied having entered into any sale agreement with the plaintiff in respect of the agricultural land owned by her. It is alleged that one Karambir Singh, cousin of defendant No. 2, is a friend of the plaintiff, who is a contractor in CPWD and HUDA. It is alleged that both the plaintiff and Karambir Singh represented to the defendants that they would be made Government contractor if they arranged Rs 50-60 lakh because bank transaction is required to be shown for registration as Government contractor. The defendants arranged Rs 60 lakh in March, 2008 and paid that amount to the plaintiff in cash through Karambir Singh. They promised to repay the said amount within 2-3 months by way of cheques. It is further alleged that the defendants

opened a joint account in the bank at the instance of the plaintiff and Karambir Singh, who obtained four blank cheques from them in June, 2008 on the pretext that those cheques would be required for giving security in CPWD and HUDA. It is further alleged that the plaintiff in connivance with Karambir Singh, issued those cheques in the name of defendant No. 1, assuring them that this was repayment of the amount advanced by the defendants to the plaintiff through Karambir Singh for showing transaction in the bank.

3. In **M/s Mechalec Engineers and Manufactures v. M/s Basic Equipment Corporation** (1977) 1 SCR 1060, the Supreme Court set out the following principles:-

(a) If the Defendant satisfies the Court that he has a good defence to the claim on its merits the plaintiff is not entitled to leave to sign judgment and the defendant is entitled to unconditional leave to defend.

(b) If the defendant raises a triable issue indicating that he has a fair or bona fide or reasonable defence although not a positively good defence the plaintiff is not entitled to sign judgment and the Defendant is entitled to unconditional leave to defend.

(c) If the defendant discloses such facts as may be deemed sufficient to entitle him to defend, that is to say, although the affidavit does not

positively and immediately make it clear that he has a defence, yet, shews such a state of facts as leads to the inference that at the trial of the action he may be able to establish a defence to the plaintiff's claim the Plaintiff is not entitled to judgment and the Defendant is entitled to leave to defend but in such a case the Court may in its discretion impose conditions as to the time or mode of trial but not as to payment into Court or furnishing security.

(d) If the defendant has no defence or the defence set up is illusory or sham or practically moonshine then ordinarily the Plaintiff is entitled to leave to sign judgment and the Defendant is not entitled to leave to defend.

(e) 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.

In these circumstances, the defence taken in the application does not appear to be *bona fide* and appears to be sham and illusory.

4. It is not in dispute that plaintiff paid Rs 54 lakh by way of various cheques, issued in the name of defendant No.1. The details of these cheques have been given in para 5 of the plaint. The case of the plaintiff is that he paid this amount towards sale consideration for purchase of agricultural land from defendant No. 1, whereas the case of the defendants is that a sum of Rs 60 lakh was paid by them in cash to the plaintiff through Shri Karambir Singh for the purpose of showing transactions, in order to obtain registration with CPWD/HUDA. The plaintiff has placed on record a photocopy of the agreement to sell alleged to have been executed by defendant No. 1 in his favour as also the copy of the receipt of Rs 54 lakh alleged to have been executed by defendant No. 1 in this regard. The case of the defendants in the application for leave to contest is that these are forged documents. I have perused documents in question. They purport to be signed by defendant No. 1 Smt. Sapna and also purport to bear her thumb impression. I find that there is no specific averment in the application that these documents do not bear signature and thumb impression of defendant. No.1. Had the defendants stated so specifically in the application filed by them, it could have been possible to send these documents to CFSL for obtaining expert opinion with respect to signature and thumb impression affixed on the documents. Be that as it may, the important fact is that the receipt of Rs 54 lakh from the plaintiff by way of cheques mentioned in para 5 of the plaint has not been disputed by the defendants.

5. The next question which comes up for consideration is as to whether there is any prima facie material on record showing payment of Rs.60 lakhs by the defendants to the plaintiff through Shri Karambir Singh. There is no receipt evidencing receipt of the aforesaid amount either by the plaintiff or by Shri Karambir Singh. The defendants have not explained, in the application, as to why no receipt was taken by them while making cash payment of Rs.60 lakhs to the plaintiff Shri Karambir Singh. I specifically asked the learned counsel for the defendants as to what was the source for making cash payments of Rs.60 lakhs to the plaintiff Shri Karambir Singh. The learned counsel for the defendants stated that the amount was arranged by the defendants from relatives and family members. I, however, find that there is no such averment in the application under consideration. No particulars have been given by the learned counsel for the defendants as to when the defendants borrowed money for making cash payment to the plaintiff Shri Karambir Singh, was the amount borrowed and from whom? In the absence of any reference in this regard in the application under consideration and any particulars even during arguments, I am unable to accept, even prima facie, that the defendants borrowed money from others and made cash payment of Rs.60 lakhs to the plaintiff and that too without obtaining another receipt either from him or from Shri Karambir Singh.

6. It is not in dispute that the cheques on the basis of which this suit has been filed bears signature of both the defendants. The averment made in the application in this regard is that the plaintiff and Shri Karambir Singh got four blank cheques signed from the defendant in June, 2008 on the pretext that they are required for giving securities in CPWD and HUDA. I am unable to appreciate how the defendants could have given blank cheques to plaintiff and/or Shri Karambir Singh on such a pretext. No one can accept that blank cheques would be required to be submitted in CPWD/HUDA. This is also not the case of the defendants that they had agreed to deposit any particular amount towards security with CPWD/HUDA. This is also not their case that they had funds in their accounts at the time these cheques were issued by them. In fact, I am unable to appreciate how blank cheques could have been given by the defendants for the purpose stated above, particularly when they do not say how much amount was to be filled in them. No purpose could in any case have been served by giving blank cheques, when there were no funds in the account.

7. The blank cheques are alleged to have been issued in June, 2008. The cheques were dishonoured when presented to the bank in September 18, 2008. On presentation of the cheques and their dishonour by the bank, the defendants would have come to know that the cheques have been misused by filling up amounts of Rs.30 lakhs each in favour of the plaintiff. In ordinarily course of human conduct,

they would have lodged FIR against the plaintiff and Shri Karambir Singh in this regard and would have given a notice asking them to return those cheques forthwith. However, no FIR has been lodged and no such notice is alleged to have been given by the defendants to the plaintiff.

8. In these circumstances, it appears to be that the defendants have no *bona fide* and genuine defence to the claim of the plaintiff and the plea taken in this application are sham and illusory having been made only with a view to obtain leave to contest the suit. However, in view of the decision of the Supreme Court in **Mechalec Engineers (supra)**, I grant leave to the defendants to contest the suit subject to their filing an FDR or bank guarantee for Rs.60 lakhs to the satisfaction of the concerned Joint Registrar within two weeks from today, failing which the application shall stand rejected.

The IA stands disposed of.

IA No.11329/2011(u/O XXXVII R.3 CPC)

The appearance filed by the defendants have already been taken on record with this application.

The application stands disposed of.

IA No.13292/2011(u/O XXXVII R.3(4) CPC)

Summons for judgment have already been served upon the defendants and they have also applied for leave to contest.

The application stands disposed of.

CS(OS) No.575/2011

Renotify on 8th October, 2012.

V.K.JAIN, J

SEPTEMBER 18, 2012
‘bg’/’sn’