

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

+ **CS(OS) 696/2010**

RAMESH CHANDER GOEL & ANR Plaintiffs
Through: Mr. P.D. Gupta and Mr. Kamal
Gupta, Advocate.

versus

M/S VIPIN ENTERPRISES & ORS Defendants
Through: Mr. Pradeep Kumar Bakshi and
Mr. Rajat Navet, Advocate for
the defendant No.2.

% Date of Decision : September 28, 2012

CORAM:
HON'BLE MS. JUSTICE REVA KHETRAPAL

J U D G M E N T

: REVA KHETRAPAL, J.

IA No.10941/2011

1. The Plaintiffs by way of this application under Order XII Rule 6, Order XXXIX Rule 10 read with Section 151 CPC seek passing of a decree against the Defendant Nos.1 to 3 on the basis of admissions.
2. The factual matrix may be briefly delineated as follows.
3. The Plaintiffs were sureties/guarantors for securing the repayment of the cash credit facility granted by the Defendant

No.4, Punjab National Bank to the Defendant No.1 – M/s. Vipin Enterprises and its partners Defendant Nos.2 and 3. Initially, the credit facility was granted subject to a maximum of ₹ 95 Lacs, but subsequently it was enhanced to ₹ 175 Lacs. By means of a demand notice dated 17.11.2006 issued under Section 13(2) of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short “SARFAESI Act”), the Defendant No.4 PNB recalled the entire outstanding debt together with interest and other charges, stated to be ₹ 1,85,82,770.24 paise within 60 days from the date of the notice. The Defendant Nos.1 to 3 having failed to comply with the demand notice dated 17.11.2006, the defendant No.4 PNB issued a letter dated 17.03.2007 addressed to the Plaintiffs and the Defendant Nos.1 to 3, whereunder the Plaintiffs were called upon to deliver physical possession of the aforesaid residential house on or before 02.04.2007, failing which it was threatened that the possession thereof would be taken over by the Defendant No.4 – PNB.

4. In view of the aforementioned threat of coercive action and dispossession from their residential house, the Plaintiff No.1, as surety/guarantor of M/s. Vipin Enterprises, Defendant No.1 partnership firm, paid an amount of ₹ 1,93,00,000/- vide two cheques drawn on ABN Amro Bank from his personal account. Having so made the payment of ₹ 1,93,00,000/-, the Plaintiff No.1 asserts that he got invested with all the rights of the

Defendant No.4, Punjab National Bank against the Defendant Nos.1 to 3 and is entitled to the recovery of the said amount.

5. A sum of ₹ 67,55,000/- is stated to have accrued on account of the interest payable by the Defendant Nos.1 to 3 to the Plaintiff No.1 from 01.05.2007 till 31.03.2010 (35 months), calculated at the rate of 12% per annum. Thus, the Plaintiff No.1 claims to be entitled to the recovery of ₹ 2,60,55,000/- with interest *pendente lite* and future.

6. Written statement was filed on behalf of Defendant No.4, Punjab National Bank, admitting that pursuant to the account of Defendant No.1 being declared Non-Performing Asset (NPA) in terms of RBI guidelines the entire outstanding dues realizable from the Defendant No.1 were paid by the Plaintiffs in their capacity as guarantors. The Defendant No.4 further admitted that it had initiated proceedings under the SARFAESI Act to make its recoveries through enforcement of the secured asset, being property bearing No.BT-61, Shalimar Bagh, Delhi mortgaged by the Plaintiff No.2.

7. Written statement was also filed on behalf of the Defendant No.2 – Shri Daya Kishan Goel, brother of the Plaintiff No.1 and partner of the Defendant No.1 firm, admitting that he is a partner of the Defendant No.1 firm, along with the Defendant No.3, who is the son of the Plaintiffs, vide Partnership Deed dated April 01, 2003. He submitted that the Plaintiffs had a stranglehold on the Defendant No.1 firm and he (the Defendant No.2) being a resident of Mumbai had no control

over the affairs of the Defendant No.1 firm. Hence, it is the Defendant No.3 who is liable to pay the alleged amount to the Plaintiffs.

8. The Defendant No.2 further submitted that the amount sought to be recovered from him was paid by the Plaintiff No.1 only to save his residential house, which was mortgaged to the Defendant No.4 PNB, and not in the capacity of guarantor as alleged. The main thrust of the Defendant No.2's defence is, however, premised on a Settlement Agreement dated 08.06.2006. In this context, the contents of Sub-Para to Para 2 and Para 4 of the preliminary objections to the written statement of Defendant No.2 are apposite, which read as under:-

Sub Para to para 2 of Preliminary Objections

"The Plaintiffs have mischievously concealed a vital document being Settlement Agreement dated 8.6.2006 entered into between the Plaintiff No.1 and the answering Defendant wherein a settlement was arrived at between the parties and it was agreed that the liabilities towards the Defendant No.4 would be fulfilled from the amount of Rs.20.00 crores, which amount has been deposited by the Indian Railways before this Hon'ble Court, in a Suit filed by the answering Defendant against the Plaintiff No.1, before this Hon'ble Court."

Para 4 of Preliminary Objections

"It is stated that there is not even a whisper of the above fact that an amount of Rs.20.00 crores was deposited by the Indian Railways, before this Hon'ble Court and how that money came about to be deposited. Further, the plaintiffs have intentionally and with malafide motive, concealed the Agreement dated 6.8.2006 (sic.), wherein the parties had allocated a sum of Rs.4 crores towards the liabilities arising

out of the loans taken by the Defendant No.1 from the Defendant No.4. It is therefore submitted that without prejudice to the contention of the Answering Defendant that no monies are due to the Plaintiffs from the answering Defendant, it is stated that if at all, any money has to be paid to the Plaintiffs, it has to come from the above mentioned amount of Rs.20 crores, lying with this Hon'ble Court. Parties, including plaintiff No.1 having agreed to settle the dues of Defendant No.4 from the aforesaid amount of Rs.20.00 crores, Plaintiffs are now estopped and barred in law from claiming anything from the Answering Defendant with respect to any alleged payment made to Defendant No.4 towards purported discharge of liability of defendant No.1. In light of the above, it is most respectfully submitted that this Hon'ble Court may be pleased to dismiss the suit with exemplary costs. ”

9. Relying upon the aforesaid admissions made by the Defendant No.2 in the written statement filed by him, Mr. P.D. Gupta, Advocate on behalf of the Plaintiffs contends that in view of the said admissions, it is absolutely clear that the following facts have been clearly, categorically, unequivocally and unambiguously admitted by the Defendant No.2:-

- (a) That M/s. Vipin Enterprises – Defendant No.1 partnership firm was indebted and liable to pay Defendant No.4 – Punjab National Bank the dues on account of loan/cash credit facilities availed by the said partnership firm.
- (b) That the entire dues of Punjab National Bank – Defendant No.4 were paid by the Plaintiffs, in their capacity of guarantors/sureties of Defendant No.1.

(c) That the Defendant No.2 is a partner in Defendant No.1 partnership firm to the extent of 50% and is, therefore, jointly and severally liable for its dues.

10. It is contended that there is thus sufficient material in the form of admissions on record to enable this Court to pass a decree in favour of the Plaintiffs and against the Defendant Nos.1 to 3 holding them jointly and severally liable to pay the amount as prayed for in the plaint.

11. Mr. Pradeep Kumar Bakshi, the learned counsel for the Defendant No.2, on the other hand, relied upon the Settlement Agreement dated 8th June, 2006 entered into between the Plaintiff and the Defendant No.2 to contend that in accordance with the said Settlement Agreement the liability incurred by the Defendant No.1 could only be realized by having recourse to the sum of ₹ 20 Crores to be deposited by the Indian Railways. The relevant part of the Agreement reads as follows:-

“M/S Dinesh International Ltd. in which both Mr. Ramesh C. Goel and his family members/shareholders (party of the first part) and Mr. Daya Kishan Goel and his family members/shareholders (party of the second part) are shareholders and had invested Rs. 20 crores in the railway license for operation of container trains in consortium with ETA Engineering Private Limited, New Delhi. It has been decided that Dinesh International will withdraw its interest in the said consortium/license and ETA Engineering Private Limited will refund this amount of ₹ 20 Crores as per the payment plan covered in the agreement.

Accordingly the parties have agreed to divide the sum, when recovered from ETA Engineering Private Limited, as per the agreement as follows:

- 1. Rs. 6 Crores Mr. Daya Kishan Goel.*
- 2. Rs.8 Crores equivalent sum to be remitted to Sri Chirag Private Limited against pending import documents.*
- 3. Rs.4 Crores towards payment of entire liabilities of both Dinesh International limited and M/s Vipin Enterprises standing at Punjab National Bank, Mid Corporate Branch, New Delhi.*
- 4. Rs.2 Crores equivalent sum to be remitted to Sri Chirag private Limited against pending import documents and after this Rs. 2 Crores has been Received, First party is responsible for settlement of Private loan upto a amount of Rs. 2 Crores.”*

12. Learned counsel also heavily relied upon the law laid down by the Hon’ble Supreme Court in ***Himani Alloys Ltd. vs. Tata Steel Ltd., 2011 (7) SCALE 566*** to urge that the present application is liable to be dismissed as the admissions contained in the written statement are not of such a nature as to merit the passing of a decree based thereon. In particular, reliance was placed by him on para 10 of the decision in the said case, which is reproduced hereunder:-

“10. It is true that a judgment can be given on an “admission” contained in the minutes of a meeting. But the admission should be categorical. It should be a conscious and deliberate act of the party making it, showing an intention to be bound by it. Order 12 Rule 6 being an enabling provision,

*it is neither mandatory nor peremptory but discretionary. The court, on examination of the facts and circumstances, has to exercise its judicial discretion, keeping in mind that a judgment on admission is a judgment without trial which permanently denies any remedy to the Defendant, by way of an appeal on merits. Therefore unless the admission is clear, unambiguous and unconditional, the discretion of the Court should not be exercised to deny the valuable right of a Defendant to contest the claim. In short the discretion should be used only when there is a clear 'admission' which can be acted upon. (See also **Uttam Singh Duggal and Co. Ltd. v. United Bank of India** 2000 (7) SCC 120, **Karam Kapahi v. Lal Chand Public Charitable Trust** 2010 (4) SCC 753 and **Jeevan Diesels and Electricals Ltd. v. Jasbir Singh Chadha** 2010 (6) SCC 601.) There is no such admission in this case."*

13. Having carefully considered and weighed the rival submissions of the parties, I am of the considered opinion that the present suit deserves to be decreed in view of the admissions made by the Defendants in the written statements filed by them, which admissions are clear, unequivocal and unambiguous. The constitution of the Defendant No.1 firm is not in dispute as also the ratio of profit/loss sharing between the Defendant No.1 and the Defendant No.2. The extent of credit facility availed of by the Defendant No.1 firm from the Defendant No.4 PNB is also not in dispute. It is not denied that the account of the Defendant No.1 firm was declared a Non-Performing Asset (NPA) under the SARFAESI Act nor it is in dispute that recovery was sought to be made by the Defendant No.4 under Section 13(4) of the SARFAESI Act by resorting to the secured asset mortgaged with the Bank by the Plaintiffs by deposit of title deeds,

being their residential property bearing No. BT-61, Shalimar Bagh, Delhi.

14. The Defendant No.4 PNB in the written statement filed by it has affirmed that the Plaintiffs were the guarantors for the re-payment of the amount of liabilities incurred by the Defendant No.1 firm and that besides being the guarantor, the Plaintiff No.2 had mortgaged her property bearing No. BT-61, Shalimar Bagh, Delhi. The Defendant No.4 PNB also affirmed that the entire outstanding dues were cleared by the Plaintiffs on the failure of the Defendant Nos.1 to 3 to comply with the notice under Section 13(2) of the SARFAESI Act and after initiation of proceedings by the Bank under Section 13(4) of the said Act for sale of the residential house of the Plaintiffs.

15. As regards the defence sought to be pressed into service by the Defendant No.2 that the Settlement Agreement dated 08.06.2006 entered into between the parties provides for allocation of a certain sum of money, i.e., ₹ 4 Crores towards liabilities arising out of loans taken from the Defendant No.4 – Punjab National Bank and Defendant No.2's contention that the present suit is liable to be dismissed on account of suppression of the said document, I find no merit in the same. A bare look at the said document, assuming it to be correct, shows that it is not in dispute that the Defendant No.1 firm is indebted to the Punjab National Bank and the parties had earmarked a sum of ₹ 4 Crores towards payment of the liability owed to the Punjab National Bank by the Defendant No.1 firm and M/s. Dinesh International Limited, but the said Settlement Agreement by no means effaces the right of the Plaintiffs as guarantors to obtain re-payment of

the amount paid by them towards the liability incurred by the Defendant No.1 firm. Further, it is not in dispute that by an order dated 30.01.2008 passed by this Court (Hon'ble Mr. Justice S.N. Aggarwal) in IA No.14922/2007 in CS(OS) 645/2006, the Court had recorded the consent of the Defendants to the release of ₹ 50 Lacs from the amount of ₹ 20 Crores deposited by the Railways to the Plaintiff No.1 (who was arrayed as Defendant No.1 in the said suit). The said order is apposite and is accordingly reproduced hereunder:-

“30.01.2008

*Present: Plaintiff with his counsel Mr. Abhijeet Sinha and Mr. Ali Naqvi, Advocates.
Mr. Sanjay Jain, Sr. Advocate with Mr. Dinesh Sabharwal and Ms. Ruchika Jain for defendant No. 1.
Mr. Vinod Kumar and Mr. S. Chatterjee for defendant No.3.*

IA No. 14922/2007 in CS(OS) No. 645/2006

This is an application under Section 151 CPC filed by defendant No. 1 for release of Rs.2,09,90,000/- in favour of defendant No. 1 out of Rs. 20 Crores deposited by the Railways with this Court pursuant to an order passed by this Court on 08.05.2007. This is admitted by the counsel for the parties that the amount of Rs. 20 Crores deposited by the Railways with this Court pursuant to its order dated 08.05.2007 belongs to defendant No. 2 company in which families of the plaintiff and defendant No. 1 are the only shareholders. The family of the plaintiff has approximately 41% shareholdings whereas the family of defendant No. 1 has approximately 59% shareholdings in defendant No. 2 company. Defendant No. 2 company has certain liabilities qua third parties as is so mentioned in the agreement dated 08.06.2006 between the plaintiff and defendant No. 1, annexed as annexure D1/1 to the application being IA No.

13333/2007 filed for impleadment of the Punjab National Bank. The plaintiff and defendant No. 1 had entered into some agreement at Dubai on 08.06.2006 for apportioning the amount of Rs. 20 Crores likely to be received from the Railways/ defendant No.3. The terms and conditions of agreement between them are contained in the agreement annexed as annexure D1/1 to IA No. 13333/2007. After the parties had entered into the said agreement and after the Railways had deposited the amount of Rs. 20 Crores with this Court pursuant to its order dated 08.05.2007, some disputes arose between the parties regarding implementation of the terms contained in the aforementioned agreement.

Defendant No. 1 has filed the instant application seeking release of Rs.2,09,90,000/- out of Rs. 20 Crores deposited by the Railways in the account of defendant No. 2. Mr. Jain, learned senior counsel appearing on behalf of defendant No. 1 has argued that defendant No. 1 had deposited an amount of Rs.1,93,00,000/- in recovery proceedings filed by the Punjab National Bank in DRT, Delhi against M/s Vipin Enterprises in order to save his only residential house mortgaged with the Punjab National Bank as security for repayment of dues of M/s Vipin Enterprises in which the plaintiff and his son were the only partners. Mr. Jain has drawn attention of this Court to the agreement dated 08.06.2006 (Ex. D1/1) in order to show that the plaintiff as well as defendant No. 1 had agreed that out of Rs. 20 Crores deposited by the Railways, Rs. 4 Crores shall be utilized for repayment of dues of defendant No. 2 company and M/s Vipin Enterprises owed to the Punjab National Bank. The contention of Mr. Jain is that defendant No. 1 is entitled to release of at least Rs. 1,93,00,000/- which he has paid in the DRT, Delhi to save his residential house in recovery proceedings initiated by the Punjab National Bank against M/s Vipin Enterprises. This Court would not like to express any opinion on the merits of this contention because during arguments Mr. Sinha, learned counsel appearing on behalf of the plaintiff has agreed for releasing an amount of Rs. 50 lacs in favour of defendant No.

1 on his furnishing security to the satisfaction of the Registrar General and this concession has been given by him without prejudice to his rights and contentions on merits of the case. Mr. Sinha says that he has given the concession for release of Rs. 50 lacs out of Rs. 20 Crores to defendant No. 1 considering that defendant No. 1 has to perform the marriage of his daughter which is fixed for 12.02.2008. This concession has been given by him on instructions from the plaintiff who is present in Court.

In view of the above and having regard to the facts and circumstances of the case and the submissions made by the learned counsel for the parties, it is directed that an amount of Rs. 50 lacs out of Rs. 20 Crores deposited by the Railways with this Court be released immediately in favour of defendant No. 1 on his furnishing adequate security to the satisfaction of the Registrar General.

List the case for release of payment before the Registrar General on 01.02.2008.

The instant application stands disposed of accordingly.

IA No. 13333/2007 in CS(OS) No. 645/2006

This is an application filed by defendant No. 1 for impleadment of the Punjab National Bank under Order 1 Rule 10 CPC.

This application is not pressed by Mr. Jain, learned senior counsel appearing on behalf of defendant No. 1 at this stage.

Hence dismissed as not pressed.

CS(OS) No. 645/2006

It is jointly submitted that there are possibilities of an amicable settlement between the parties for which they both will sit together before the next date of hearing.

List for further directions on 07.05.2008.”

16. The Plaintiffs assert and the Defendants do not dispute the fact that the aforesaid sum of ₹ 20 Crores now stands attached by orders of the Hon’ble Supreme Court for payment of certain dues to the

Customs Authorities. Be that as it may, it is amply clear that the Plaintiffs in their capacity as guarantors when faced with the prospect of sale of their residential house were forced to pay the amount of the cash credit facility availed of by the Defendant No.1 and on payment of the same by the Plaintiff No.1, the Plaintiff No.1 has been invested with all the rights which the creditor (PNB) had against the principal debtors viz., Defendant Nos.1 to 3. In terms of the Settlement Agreement dated 08.06.2006, the amount of loan facility availed of by the Defendant Nos.1 to 3 was to be re-paid from the amount of ₹ 20 Crores paid by the Railways. The Railways deposited the said amount pursuant to the order of this Court dated 08.05.2007, but admittedly disputes arose between the parties regarding implementation of the terms contained in the aforementioned Agreement, as is evident from order dated 30.01.2008 reproduced hereinabove. Thus, it does not lie in the mouth of the Defendants while raising disputes in respect of the implementation of the said Agreement to assert in the same breath that the Plaintiffs are entitled to recover the money paid by them on behalf of the Defendant No.1 firm from the amount received from the Railways. The admitted position is that the said amount, in any case, now stands attached by the orders of the Hon'ble Supreme Court for amounts due to the Customs Authorities.

17. In view of the aforesaid discussion, this Court finds no impediment to the passing of a decree in the instant case in terms of the prayer made in the plaint. The suit is accordingly decreed in favour of the Plaintiff No.1 and against the Defendant Nos.1 to 3 in the sum of ₹ 2,60,55,000/- with interest @ 12% per annum from the

date of the filing of the suit till realisation. The Plaintiffs shall also be entitled to costs of the suit.

18. CS(OS) 696/2010 and IA Nos.4817/2010, 6976/2011 and 8023/2012 as also the present application stand disposed of in the above terms.

**REVA KHETRAPAL
JUDGE**

September 28, 2012
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