

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

% *Date of Decision : October 11, 2012*

+ **RFA(OS) 61/2012**

RP SINGH & ANR. ... Appellants
Represented by: Mr.Ramesh Chandra, Sr.Advocate
instructed by Mr.Hem C.Vashisht,
Advocate.

versus

NATINONAL HORTICULTURE
BOARD & ANR. ... Respondents
Represented by: Mr.Sanjeev Singh, Advocate and
Mr.Satish Kumar, Advocate.

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MR. JUSTICE MANMOHAN SINGH

PRADEEP NANDRAJOG, J. (Oral)

1. Heard learned counsel for the parties.
2. Vide impugned order dated March 28, 2012 the suit filed by the respondent No.1 under Order XXXVII of the Code of Civil Procedure has been decreed (not in full) against M/s Global Industries Ltd. and its two directors i.e. the appellants who executed personal guarantees to pay the respondent No.1 dues of the company if there was default upon leave to defend not being granted.
3. As per the plaint, two loans in sum of ₹76 lacs and ₹24 lacs were advanced by the first respondent to the company and in respect of which two written agreements dated February 13, 1995 and October 9,

1996 were executed by the company and simultaneously the appellants executed personal guarantees and that only ₹3,43,145/- towards services charges were paid. As per the two agreements, the loan amount had to be returned in installments with services charges @ 4% per annum. However, decree claimed in sum of ₹1,76,68,908/- was with a penal interest.

4. Seeking leave to defend, the appellants did not deny that the company had taken two loans as pleaded and that only ₹3,43,145/- was paid. The documents executed were explained as having been signed blank. Thus, the first ground on which leave to defend was sought was that the documents were signed blank. Second plea urged was that the company had mortgaged its assets in Haryana and thus it was pleaded that a suit under Order XXXIV of the Code ought to be filed. Thirdly it was urged that the agreement pertaining to the loan was executed at Haryana. Lastly it was pleaded that the suit amount i.e. ₹1,76,68,908/- included interest @ 18% which was more than the rate at which the company was to pay service charges.

5. Recording a concession by counsel for respondent No.1 that suit amount be restricted to ₹1 crore and 4% thereon as service charges, the learned Single Judge has held that no triable issue arises keeping in view the fact that the mortgaged asset on which respondent No.1 had a pari passu charge was attached and sold by HSIDC and out of the sale proceeds, ₹30,19,695/- was paid to the respondent No.1 during pendency of the suit; adjustment of which amount has been directed.

6. Now, the plea that the documents were signed blank contradicts the plea that since the documents were executed in Haryana and thus Courts at Haryana alone would have jurisdiction. We would further highlight that a plea taken by a party that it signed blank

documents is neither here nor there unless it is made good with reference to some other fact pleaded. Appellants do not deny that the company had availed a loan as pleaded.

7. The plea that since the agreement was executed in Haryana and so were the other documents, only Courts in Haryana would have jurisdiction, is negated for the reason all the defendants to the suit, including the appellants, reside at Delhi.

8. We accordingly concur with the view taken by the learned Judge, but would modify the language of the decree passed inasmuch as the learned Single Judge has decreed the suit in sum of ₹1,19,34,564/- by subtracting ₹57,34,344/- (being the amount calculated at 18%) from out of ₹1,76, 68,908/- claimed in the suit, and has held that from the decretal amount adjustment would be given of ₹30,19,695/- when decree is put into execution. Interest @ 4% per annum on said sum, pendente lite and till realization as also costs have been decreed.

9. The decree needs correction. The amount of ₹30,19,695/- was received when the suit was pending. Since pendente lite and future interest @ 4% has been decreed, the learned Single Judge ought to have directed that the decree would be drawn by firstly calculating interest @ 4% per annum on ₹1,19,34,564/- till the date respondent No.1 received ₹30,19,695/- and the said amount would stand adjusted as of said date by firstly being appropriated towards interest and balance towards the principal and on the balance principal, interest would accrue @ 4% per annum till realization.

10. We accordingly dispose of the appeal modifying the impugned decree as per para 9 above.

11. The suit filed by respondent No.1 shall stand decreed as per para 9 above together with costs assessed by the learned Single Judge.

12. As regards the appeal, parties shall bear their own costs.

(PRADEEP NANDRAJOG)
JUDGE

(MANMOHAN SINGH)
JUDGE

OCTOBER 11, 2012
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