

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

% *Date of Decision: November 16, 2012*

+ **RFA(OS) 108/2012**

DAYA KISHAN GOEL Appellant
Represented by: Mr.Pradeep K.Bakshi, Mr.Rajat Navet
and Ms.Prachi V.Sharma, Advocates.

versus

RAMESH CHANDER GOEL & ORS. Respondents
Represented by: Mr.P.D.Gupta and Mr.Kamal Gupta,
Advocates.

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

PRADEEP NANDRAJOG, J. (Oral)

Caveat No.1158/2012

Since counsel as above appear for the respondents caveat stands
discharged.

CMs No.19158/2012 and 19159/2012

Allowed, subject to all just exceptions.

RFA(OS) No.108/2012

1. Heard learned counsel for the parties.
2. Impugned decree is based on an admission. IA No.10941/2011 under Order XII Rule 6 of the Code of Civil Procedure has been allowed.
3. Appellant does not dispute that he is a partner of the firm carrying on business under the name and style 'M/s.Vipin Enterprises' which had availed a credit in sum of ₹175 lakhs from Punjab & Sind Bank and that his brother, Ramesh Chander Goel and his sister-in-law Aruna Goel had stood guarantee to secure repayment of the outstanding amount to the bank and had created an equitable mortgage of house bearing No.BT-61, Shalimar Bagh, Delhi owned by the sister-in-law of the appellant and when

the bank proceeded under SARFAESI Act, appellant's sister-in-law had paid ₹1,85,82,770.24 to the bank.

4. The defence taken in the written statement was that the appellant and his brother had entered into a settlement on June 08, 2006 as per which the family company named 'Dinesh International Ltd.' withdrew from the consortium with ETA Engineering Ltd. and received ₹20 crores, out of which amount the money paid to the bank had to be paid to the brother and sister-in-law of the appellant.

5. Admittedly, the amount in question has been attached under orders passed by the Supreme Court with respect to the dues of the Customs Authorities.

6. We have repeatedly asked learned counsel for the appellant, who urges that unless an admission is unequivocal no decree can be passed on admission; as to what would be the effect of a pleading where the money claimed by the plaintiff is admitted to be payable with further plea that parties have agreed the liability to the discharge from a particular fund, which stands attached by a Court.

7. Learned counsel evades an answer.

8. Indeed, where parties settle their disputes and party 'A' admits an amount being payable to party 'B' with further term of the settlement that the agreed amount shall be paid out of a common fund; upon the common fund being attached and no longer available to satisfy the agreed amount, the same has to be paid by 'A' and it would be a case where a decree can be passed on admission.

9. We highlight that the appellant does not dispute that the partnership firm in which he was a partner had availed a credit from Punjab National Bank and his brother as also his sister-in-law had stood surety and further his sister-in-law had mortgaged her house and that when the bank proceeded under SURFAESI Act his sister-in-law paid the money to the

bank.

10. We dismiss the appeal in *limine*.

11. We find that the appeal has been listed before us with an office objection to the effect that Court Fees needs to be paid at the enhanced rate in view of the recent amendment to the Schedule to the Court Fees Act by the Government of NCT Delhi.

12. In view of the law declared by the Supreme Court in the decision reported as AIR 1960 SC 980 State of Bombay vs. M/s.S.G.Films Exchange, with respect to appeals filed against orders and decrees passed in pending suits, Court fees in appeal has to be paid with reference to the Court fee payable in the suit as per the Schedule existing when the suit was filed unless the amendment is given a retrospective operation, which we find not to be the case with reference to the legislation in Delhi. Thus, we direct the Registry not to insist on Court fees to be paid at enhanced rates with respect to decrees passed in suits which were instituted before the Delhi Court Fees Amendment Act 2012 was passed.

13. Copy of this order be placed before the Registrar (Filing).

14. No costs.

CMs No.19156/2012 and 19157/2012

Since the appeal has been dismissed in *limine* CM No.19156/2012 which seeks stay of the impugned order dated September 28, 2012 pending hearing of the appeal as well as CM No.19157/2012 seeking permission to file additional documents are dismissed as infructuous.

(PRADEEP NANDRAJOG)
JUDGE

(MANMOHAN SINGH)
JUDGE

NOVEMBER 16, 2012/dk/