

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

Decided on: 01.04.2013

+ **RFA (OS) 17/2013, C.M. APPL. 1497/2013 (Under Section 5 of the Limitation Act)**

SH. BADAN LAL	 Appellant
Through : Sh. B.D. Sharma, Advocate.	
versus	
SH. RAJESH GULLAH	 Respondent
Through : Nemo.	

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE SUDERSHAN KUMAR MISRA

MR. JUSTICE S. RAVINDRA BHAT (OPEN COURT)

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C.M. APPL. 1497/2013

For the reasons mentioned in the application, the delay is condoned. C.M. Appl. 1497/2013 is allowed in the above terms.

RFA (OS) 17/2013

1. The appellant claims to be aggrieved by a judgment and decree dated 09.08.2012 by which the learned Single Judge invoked the power under Order XII Rule 6, CPC and decreed the suit in favour of the plaintiff (respondent in the present case) for Rs.24 lakhs with interest.

2. Briefly, the facts are that the plaintiff/respondent in the present case claimed a decree for Rs.24 lakhs with interest, stating that he and the defendant had friendly and cordial relationship. The plaintiff in this case was a real estate businessman, and according to the suit averments, the defendant approached the plaintiff for financial

assistance. The plaintiff advanced a personal loan to the extent of Rs.24 lakhs through Pay Order dated 15.12.2007 issued by the Oriental Bank of Commerce (OBC). The plaintiff further averred that despite repeated requests and reminders, the appellant did not return the amount which constrained him to get a legal notice issued on 10.08.2009. Despite this, the defendant/appellant defaulted in payment. Ultimately, the suit was filed.

3. The appellant/plaintiff in the present case contended in his defence that the amount of Rs. 24 lakhs received by him was towards part consideration for purchase of some agricultural land being Khasra nos. 4-8, 13-19/1, 24 and 25 out of Mustil No. 3, measuring 12 acres in the revenue estate of Village Daulatpur, Delhi. The appellant also submitted that the total consideration agreed was Rs.2,50,00,000/- per acre, and that the agreement in the form of receipt was recorded on 17.12.2007. The appellant further stated that even though the receipt was not executed by the plaintiff/respondent in the present case, but the plaintiff's representative, one Ashok Kumar, had executed the same on his behalf and paid Rs. 1 lakh as token money to the appellant and other co-sharers. It was contended by the defendant/appellant that since the sale transaction had to be completed within two years but was not done, he forfeited the said amount of Rs. 24 lakhs. The appellant also argued that the plaintiff never disclosed in the suit how he came into contact with him (the appellant), and how the plaintiff could advance such a heavy amount of Rs. 24 lakhs to the appellant.

4. Learned Single Judge was of the opinion that even though the

two documents -receipt relied upon by the defendant/appellant were on the record, the plea about Rs. 24 lakhs being part of a larger transaction for sale of immovable property was not only unconvincing but entirely false. The Court noticed that if the defendant's contention that the transactional value agreed upon by the parties was Rs. 2,50,00,000/- per acre, the total consideration would have been Rs. 30 crores. That apart, the learned Single Judge underlined the sheer improbability of not recording of receipt of Rs. 24 lakhs in the document relied upon by the appellant dated 17.12.2007. The Court further stated in the impugned judgment that by order dated 09.02.2012, the defendant/appellant in the present case had sought more time to file original documents and sought final opportunity but did not avail of it. Learned Single Judge, therefore, pertinently noted as follows:

“4.....The defendant has also not taken any plea regarding forfeiture of the said amount of Rs. 24 lacs, neither any request or legal notice was sent by the defendant to call upon the plaintiff to complete the sale transaction, before forfeiting the said amount of Rs. 24 lacs. The defendant did not even send any intimation or reply by any means to the legal notice sent by the plaintiff and now to assert that the said legal notice was not received by the defendant is nothing, but farce and concoted as the postal receipt of the said legal notice is placed on record by the plaintiff. Therefore, the possibility of service of legal notice also arises in favour of the plaintiff, under Section 27 of the General Clauses Act.

5. Going by the averments made in the written statement, the defence is not only evasive but appears to

be wholly false, frivolous and vexatious on the very face of it. To send such a case in trial would result in utter wastage of time of this Court. Based on the admission of the defendant with regard to the receipt of the payment of Rs. 24 lacs by him through pay order, discretion under Order 12 Rule 6 CPC can be exercised by this court to pass a judgment in favour of the plaintiff based on the unequivocal admission of Rs. 24 lacs in the written statement filed by the defendant. So far, the defendant has made an attempt to link the said admission with sale of land in question, the defendant has not placed on record any convincing material nor made sufficient averments in the written statement to satisfy this Court with regard to the factum of any such sale transaction been executed between the parties. This Court, therefore, does not find any triable issues to be framed in the present matter, as based on the admission of the defendant; a decree in favour of the plaintiff is straihaway passed under Order 12 Rule 6 CPC.

6. The suit filed by the plaintiff is accordingly decreed for a sum of Rs. 24 lacs with pendent lite and future interest @ 12% per annum. The cost of the suit be also awarded in favour of the plaintiff. Decree sheet be drawn up accordingly.”

5. Learned counsel for the appellant relied upon the decision in *Uttam Singh Dugal and Co. Ltd. v. Union Bank of India and Ors.* AIR 2000 SC 2740 and contended that the Court should be slow and circumspect in invoking such drastic powers. Learned counsel emphasized that the mere fact that the appellant did not deny receiving Rs. 24 lakhs should not have resulted in the learned Single Judge holding that his explanation for the amount was false. Elaborating on this argument, it is contended that the truth or

otherwise of the plea of the same being part of a larger amount agreed upon by the parties towards sale consideration for purchase of agricultural lands should have been ascertained only during the course of trial, after evidence. The Court, therefore, should not have invoked its summary powers and disbelieved the plea of the defendant/appellant and proceeded to decree the suit. Learned counsel also relied upon the two documents styled as receipts to say that the plaintiff nowhere contended that Sh. Ashok Kumar was not his representative and that the terms recorded in the receipt of 17.12.2007, by which the parties agreed to the sale transaction was not on behalf of the plaintiff/respondent. In these circumstances, the Court should have desisted its powers under Order XII Rule 6.

6. At the outset, this Court notices that the two receipts which have been relied upon heavily by the defendant/appellant are on the record. Learned Single Judge had noticed that despite several opportunities granted to the defendant, the originals of these documents were never placed on record. Concededly, the plaintiff did not execute these documents. On the other hand, the defendant did not deny having received Rs. 24 lakhs which was paid under the Pay Order dated 15.12.2007. If one pauses here and considers the defendant's contention about the sale transaction in its perspective, there is complete lack of any explanation why the later receipt dated 15.12.2007 is silent about the sum of Rs. 24 lakhs which is claimed by the defendant/appellant to be a larger part of the sale consideration. Furthermore, this Court is of the opinion that the learned Single Judge correctly inferred that if the correct transaction value was Rs. 2 crores

50 lakhs per acre and the total extent of land to be purchased was 12 acres, the total consideration would have been Rs. 30 crores, which is not mentioned in any document. Furthermore, even more crucially the nature of the documents relied upon by the defendant/appellant did not empower him to forfeit any part of the amount received by him. If the terms of the agreement were in fact reduced into writing, as the defendant contends, it was imperative that such a forfeiture clause – which is of an exceptional nature enabling one of the parties to entirely forfeit the amounts received - be explicitly mentioned; but the same is conspicuously absent. Such matters cannot be left to the oral assertions of one of the parties, and recognition by a Court that such unilateral powers have been granted to one party in an agreement between the two parties having capacity to contract in such circumstances would result in havoc and chaos. For these reasons, this Court is of the opinion that the learned Single Judge correctly inferred that the pleas of the defendant that the amount (of Rs. 24 lakhs) being initial or token consideration received by the appellant, was false and only meant to delay the proceedings.

7. The Court is conscious of the decision in *Uttam Singh Dugal (supra)*; at the same time the Court also is mindful of the fact that the facts and circumstances of each case have to be seen in the context of the decisions cited. The power under Order XII Rule 6 is of the widest amplitude. The admission by the defendant may be in the course of the proceedings or even “otherwise” – as is expressly stated by the said provisions of Order XII Rule 6. In the present case, this Court is of the view that the learned Single Judge had the power to see through

the pleadings and discern whether the written statement did spell-out a defence that was triable. Merely because the defendant put up the plea that the amount of Rs. 24 lakhs was received as part of a larger transaction, would not have justified a trial which would have been otherwise lengthy, time consuming and ultimately deleterious to the interests of the plaintiff. In view of these conclusions, the Court is of the opinion that the appeal lacks in merit. It is consequently dismissed.

S. RAVINDRA BHAT
(JUDGE)

SUDERSHAN KUMAR MISRA
(JUDGE)

APRIL 1, 2013
‘ajk’