

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

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Date of decision: 10th October, 2013

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RFA 380/2010

PRABHATI LAL

..... Appellant

Through: Mr. T.S. Upadhyay, Adv.

versus

YASH PAL

..... Respondent

Through: In person.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

RAJIV SAHAI ENDLAW, J

1. The appellant/plaintiff is aggrieved from the judgment dated 31st March, 2010 of the Court of the learned Addl. District Judge-02 (North) Delhi, decreeing his suit, being CS No.04/2009 for recovery of Rs.3,99,000/- , only for a sum of Rs.1,60,000/- with costs and interest at 9% per annum from the date of institution of the suit and till realization.

2. Notice of the appeal was issued. It appears that the appellant/plaintiff was unable to even execute the decree for the sum of Rs.1,60,000/- with interest in his favour. On 20th January, 2011 an offer was made by the counsel for the respondent/defendant that the respondent/defendant was willing to pay the sum of Rs.1,60,000 with 9% interest within six months from then. The counsel for the appellant/plaintiff sought time to obtain instructions and also submitted, that the appellant/plaintiff, to show his *bona fides* should be asked to pay at least Rs.50,000/-. The said request of the

appellant/plaintiff was accepted and the respondent/defendant was directed to bring Rs.50,000/- on the next date. The respondent/defendant issued two post dated cheques of Rs.25,000/- each and which were accepted by the counsel for the appellant/plaintiff without prejudice to his rights and contentions. The said cheques were not honoured and from time to time a sum of Rs.50,000/- in cash was paid by the counsel for the respondent/defendant to the counsel for the appellant/plaintiff and which the appellant/plaintiff accepted without prejudice to his rights and contentions. It appears that the respondent/defendant could not even pay the fees of his Advocate, who stopped appearing and the respondent or his wife started appearing in person. The respondent/defendant on 4th August, 2011 again stated that he would pay the balance decretal amount in instalments in six months but could not honour the said commitment also. Vide order dated 19th August, 2011 the respondent/defendant was directed to file an affidavit of his assets as well as income in Form 16A, Appendix E under Order 21 Rule 41 (2) of the CPC along with relevant documents. Though such an affidavit has been filed by the respondent/defendant but neither has the appellant/plaintiff inspite of opportunity filed any response thereto nor has the counsel for the appellant/plaintiff during the hearing today referred to the same. A further sum of Rs.5,000/- was paid in cash by the respondent/defendant to the appellant/plaintiff as recorded in the order dated 28th September, 2011 and which was accepted by the counsel for the appellant/plaintiff without prejudice to his rights and contentions. The appeal was on 21st October, 2011 admitted for hearing. On application of the appellant/plaintiff that he is a senior citizen, hearing was expedited. The

order dated 30th May, 2013 records payments of another amount of Rs.6,000/- by the respondent/defendant to the appellant/plaintiff. The counsel for the appellant/plaintiff and the respondent/defendant in person have been heard.

3. It has, at the outset, been enquired from the counsel for the appellant/plaintiff as to what purpose the enhancement in the decretal amount as sought in this appeal would serve in as much as the appellant/plaintiff owing to the financial status of the respondent/defendant is unable to recover even the amount which has already been decreed in his favour.

4. The counsel for the appellant/plaintiff has fairly stated that that is the fate of the appellant/plaintiff.

5. The appellant/plaintiff filed the suit from which this appeal arises, under Order 37 CPC, pleading that the respondent/defendant had borrowed a sum of Rs.3 lacs at 18% interest per annum from him on 28th February, 2007 and in consideration thereof had executed a promissory note, receipt and an Agreement; that the respondent/defendant had however failed to re-pay the said amount inspite of demand; that though cheques for Rs.2 lacs and Rs.1,50,000/- were issued in part payment of the amount due but the same were dishonoured owing to insufficiency of funds in the bank account of the respondent/defendant; accordingly suit for recovery of Rs.3,99,000/- with future interest and costs was filed.

6. Summons for appearance and thereafter summons for judgment were served on the respondent/defendant.

7. The respondent/defendant applied for leave to defend denying having taken any loan from the appellant/plaintiff and pleading, that the appellant/plaintiff is a property broker; that the appellant/plaintiff had approached the respondent/defendant for sale to the respondent/defendant of the flat of one Ms. Devki Rani; that in pursuance of the transaction of the said flat the respondent/defendant signed a blank pro-note and issued two blank cheques as security in the year 2006; however though the said deal did not materialize but the appellant/plaintiff did not return the pro-note and cheques on the ground that the same had been misplaced by him; that the appellant/plaintiff has filled up the said pro-note and cheques in his own favour and the same are fabricated; that it is for this reason only that the appellant/plaintiff did not file any complaint of offence under Section 138 of the Negotiable Instruments Act, 1881.

8. Needless to state that the appellant/plaintiff controverted the contents of the leave to defend application.

9. The order dated 24th November, 2009 of the Trial Court is as under:-

“24.11.2009

Present: Mr. T.S. Upadhyay, counsel for the plaintiff

Mr. Sandeep Verma, counsel for the defendant

Both the parties are also present in person

The matter has been compromised between the parties in a total sum of Rs.1,60,000/- (Rs. One lac sixty thousand only) and the schedule of the payment shall be as under:-

- 1. Rs.50,000/- shall be paid in the last week of January, 2010.*
- 2. Rs.30,000/- shall be paid in the last week of February, 2010.*
- 3. Rs.40,000/- shall be paid in the last week of March, 2010.*
- 4. The last instalment shall be Rs.40,000/- to be paid in the last week of April, 2010.*

Now to come up on 29.01.2010 for further proceedings.

Copy of this order be given dasti to both the parties, as prayed.”

10. None appeared for the respondent/defendant before the Trial Court on 29th January, 2010 when the appellant/plaintiff informed that the respondent/defendant has not made the payment due. The suit was accordingly adjourned to 26th February, 2010.

11. On 26th February, 2010 the counsel for the respondent/defendant informed that the respondent/defendant is unwell. The learned Addl. District Judge inferred that settlement between the parties had ‘broken down’, only due to the respondent/defendant’s failure to make payment and posted the suit to 31st March, 2010 for arguments on the leave to defend application.

12. On 31st March, 2010 vide the impugned order/judgment it was held, that the respondent/defendant had not disclosed any particulars of the flat which was the subject matter of the deal between him and Ms. Devki Rani and had not filed any document of sale; that it was impossible for a person to hand over blank pro-note and blank cheques to strangers; that the defence of the respondent/defendant in the leave to defend application was thus a sham and moonshine; however in view of the compromise arrived at between the parties on 24th November, 2009 the appellant/plaintiff was held entitled to recovery of Rs.1,60,000/- only with interest and costs as aforesaid.

13. It is the contention of the counsel for the appellant/plaintiff, that the compromise arrived at between the parties on 24th November, 2009 had 'broken down' owing to default of the respondent/defendant as held by the learned Addl. District Judge also in the order dated 26th February, 2010 and owing whereto the application for leave to defend was posted for hearing; that the learned Addl. District Judge after having held the defence of the respondent/defendant to be sham and moonshine, ought to have decreed the suit of the appellant/plaintiff for recovery of the entire amount of Rs.3,99,000/- with interest and not for the compromise amount of Rs.1,60,000/- only.

14. The respondent/defendant in person of course reiterates the contents of his leave to defend application.

15. I have considered the contention of the counsel for the appellant/plaintiff.

16. The compromise arrived at between the parties and recorded in the order dated 24th November, 2009 is not a contingent or a conditional compromise, dependent upon the payments mentioned therein being made within the time also mentioned therein. It also does not contain any agreement that in the event of the payments being not made, the entire suit amount would be recoverable or the parties would not be bound thereby. On the contrary, by the said compromise the *lis* subject matter of the suit was settled for Rs.1,60,000/-. The order sheet of 24th November, 2009 bears the signatures of the appellant/plaintiff as well as the respondent/defendant and their respective counsels, as well as acknowledgment of having received *dasti* copy of the said order. In fact upon the said compromise, the suit should have been decreed in terms thereof and nothing further remained.

17. I have wondered whether on account of the suit having not been disposed of on 24th November, 2009 and having been adjourned for further proceedings it can be inferred that the compromise as recorded therein was a conditional one. I am unable to hold so. Order 23 Rule 3 of the CPC makes it obligatory upon the Court to, upon finding the compromise arrived at between the parties to be lawful, accept the same and pass a decree in terms thereof. A reading of the order dated 24th November, 2009 shows that the Court not only recorded the compromise arrived at between the parties but also accepted the same. Once that had been done, all that remained to be done by the Court, was to pass a decree in terms thereof and at which stage the Court is empowered and entitled to make consequential orders.

18. It cannot be lost sight of, that a compromise is essentially a contract between the parties, though with a seal of the Court. The appellant/plaintiff though had sued for recovery of Rs.3,99,000/-, was entitled to subsequently agree to accept a lesser amount from the respondent/defendant and which he did on 24th November, 2009. While doing so, though the time for payment of lesser amount was also mentioned but it was not mentioned that the acceptance of lesser amount and giving up right to recover balance amount was contingent upon the lesser amount being paid within the time mentioned. On non-mentioning thereof, the right of the appellant/plaintiff to recover balance amount stood extinguished and the appellant/plaintiff was/is estopped from recovering the balance amount. The only thing which the learned Addl. District Judge, in the circumstance of the decree in accordance with compromise having not been passed, could have done was to award interest for non-payment within agreed time though there was no agreement with respect thereto also in the compromise.

19. I have also considered the effect of the observations of the learned Addl. District Judge in the order dated 26th February, 2010, of the compromise/settlement between the parties having broken down due to the fault of the respondent/defendant, and of the suit having been posted for arguments on the leave to defend application. It is significant that the said order is not a consent order. I am of the view that if the *lis* in the suit came to an end by compromise on 24th November, 2009, the observation of the Court in a subsequent order to the effect that the compromise had broken down cannot take away the effect flowing in law of compromise. The learned

Addl. District Judge perhaps realizing the same, decreed the suit only for the compromise amount and not for the entire amount claimed in the suit.

20. It cannot also be lost sight of that the learned Addl. District Judge who so decreed the suit was the same before whom compromise was arrived at by the parties appearing in person and who had recorded the compromise. Due weightage has to be given to the said important aspect.

21. The counsel for the appellant/plaintiff is unable to put forth any argument to dissuade me from taking the aforesaid opinion.

22. I am therefore unable to find any error in the view taken by the learned Addl. District Judge. The appeal therefore fails and is dismissed, leaving the parties to bear their own costs.

Decree sheet be drawn up.

RAJIV SAHAI ENDLAW, J

OCTOBER 10, 2013

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