

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

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Date of decision: 26th August, 2013

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RFA No.287/2013

RAJESH ANAND

..... Appellant

Through: Mr. Akhilendra Narayan Singh, Adv.

Versus

**INDUSTRIAL DEVELOPMENT BANK
OF INDIA LTD.**

.....Respondent

Through: Mr. Satish Kumar, Adv.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

RAJIV SAHAI ENDLAW, J

1. This appeal impugns the judgment and decree dated 20.04.2013 (in CS No.248/2011) on admissions of the Court of Additional District Judge (Central)-09, Delhi directing the appellant to make payment to the respondent / plaintiff of 11 installments of Rs.15,330/- per month.

2. The suit from which this appeal arises was filed by the respondent / plaintiff against the appellant / defendant for recovery of Rs.4,55,362.62p together with interest thereon at the rate of 36% per annum till realization, pleading:

- (i) that the appellant / defendant was the borrower of the respondent / plaintiff and had availed loan facility from the respondent / plaintiff under the Personal Loan Scheme;
- (ii) that a Loan Agreement dated 12.02.2007 and other documents were executed by the parties and in pursuance thereto a total sum of Rs.4,36,000/- was disbursed by the respondent / plaintiff to the appellant / defendant;
- (iii) that the said loan was to be re-paid in 36 equated monthly installments of Rs.15,330/- per month starting from 05.03.2007;
- (iv) the appellant / defendant failed to discharge his liability and defaulted in making regular equated monthly installment and was otherwise irregular in making payments; and
- (v) that as on the date of institution of the suit, a sum of Rs.4,55,362.62p was due from the appellant / defendant to the respondent / plaintiff.

3. The appellant / defendant contested the suit by filing a written statement and para No.7 of the Brief Facts in the said written statement was as under:

7. *That last but not the least, the defendant had already paid 25 installments out of 36 installments, there is / was no default in making payments, however due to steep market competition and economic slowdown, the business of the defendant had gone bad to worse, which resulted in late payment of the installments.*

4. The respondent / plaintiff filed an application under Order 12 Rule 6 of the CPC pleading that since the appellant / defendant has admitted 11 installments of Rs.15,330/- to be due from him, a decree on admissions to the said extent be passed.

5. The appellant / defendant filed a reply denying that there was any admission.

6. The order dated 02.04.2013 of the Trial Court *inter alia* is as under:

“It is admitted during argument that there is default of 11 installments. The defendant is directed to deposit the amount of 11

installment in this court in the shape of an FDR in favour of 'Additional District Judge-09, Central District, Delhi'. The FDR should be issued by a nationalized bank for a period of six months and with having automatic renewal clause. Both the parties shall comply with the direction on or before the next date of hearing. Put up for compliance of the order on 20.04.2013."

7. The appellant / defendant filed an application before the Trial Court on 20.04.2013 for recall of the aforesaid order dated 02.04.2013 pleading:

- (i) that the appellant / defendant had in the written statement also disputed the territorial jurisdiction of the Trial Court;
- (ii) that the appellant / defendant was under huge financial hardship and had suffered loss in business and was trying to recover the same;
- (iii) that even the house of the appellant / defendant was mortgaged;
- (iv) that the banker of the appellant / defendant had also issued a notice under Section 13(2) of The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002; and

(v) that the appellant / defendant was thus not in a position to abide by the direction dated 02.04.2013.

8. The learned Additional District Judge in order dated 20.04.2013 held no ground to have been made out for recall of the order dated 02.04.2013 and directed the appellant / defendant as aforesaid to make payment of 11 installments of Rs.15,330/- each to the respondent / plaintiff.

9. Aggrieved therefrom the present appeal was filed which came up first before this Court during the summer break on 21.06.2013 when notice thereof was issued for 06.08.2013.

10. On 06.08.2013 the counsel for the respondent / plaintiff informed that the appellant / defendant in execution of the judgment and decree dated 20.04.2013 on admissions had handed over post dated cheques for the decretal amount to the respondent / plaintiff and the matter having been settled between the parties, the question of proceeding with this appeal did not arise.

11. Per contra, the counsel for the appellant / defendant stated that the cheques were given without prejudice to the right to pursue the appeal.

12. However since neither counsel, on 06.08.2013, was in possession of the orders in execution, the matter was posted for today.

13. The appellant / defendant has since filed documents including the Statement recorded of the appellant / defendant and the authorized representative of the respondent / plaintiff in execution of the judgment and decree on admissions on 15.07.2013 and the order passed thereon. The appellant in his statement stated as under:

“I am JD in person. The matter has been settled between the parties as full and final settlement of the decree amount of Rs.1,68,630/-. I have handed over 11 cheques bearing No.133084 to 133094, dated 22/07/2013 till 22/05/2014 of Rs.15,330/- each all drawn on HDFC Bank, New Delhi. All the cheques have been signed and issued by my son Sh. Sahil Anand on my behalf. I assure that the said cheques shall be honoured in all circumstances. I undertake that I will make all arrangements to honour the said cheque and it is my undertaking that the said cheques will not be dishonoured in any circumstance. These cheques are towards the payment of full and final decree amount. If the cheques got dishonoured then DH will be entitled to revive the present execution application as well as also to take legal

action as per law. I am making this statement and handing over these cheques without prejudice to my rights, liberty and claim.”

14. The authorized representative of the respondent in his statement stated as under:

“I am AR of the DH. I have heard the statement made by the JD today in this court. I have received today 11 cheques for a total sum of Rs.1,68,630/-, each amounting to Rs.15,330/- from the JD. I state that the cheques handed over by the JD towards the full and final decree amount and if the cheques are honoured then nothing remains due towards the decree amount. As per the above settlement, I am withdrawing the present decree as satisfied”.

And the following order was passed on the same day:

“Sh. Akhilendra Singh, counsel for the JD along with JD in person.

It is stated by both the parties that the matter has been settled between the parties and the JD has handed over 11 cheques total amounting to Rs.1,68,630/- to the DH towards the full and final decree amount. Let statement of JD be recorded.

Statement of JD is recorded. Statement of AR of the DH is also recorded who has stated the amount in the cheques is according to the

full and final decree amount. The JD has also undertaken that in all circumstances, the cheques will not be dishonoured and the same shall be encashed on presentation. With these directions, the present execution application is disposed of as satisfied with liberty to DH to revive it in case the JD breach as the undertaking as given by him before this court as the undertaking of the JD is accepted by this court. JD shall ensure to comply with the statement and undertaking as breach of it shall follow with severe consequences. In case the cheque is dishonoured then the DH shall also have liberty to take all recourses available in law against the JD including revival of the execution application. File be consigned to record room.”

15. The counsel for the appellant / defendant invites attention to the last sentence of the statement recorded of the appellant / defendant on 15.07.2013 to contend that the payment does not come in the way of this appeal. However upon his attention being drawn to the second sentence, he states that the respondent / plaintiff had filed the execution of the judgment and decree on admissions on 06.06.2013 i.e. on the second last day preceding the summer break and at the instance of Trial Court Judge; that the hurry in which the execution is filed is evident from the execution petition being signed by and the affidavit accompanying the same being of, the advocate for the respondent / plaintiff only; that warrants of attachment

were issued but remained unexecuted; that the respondent / plaintiff thereafter applied for arrest of the appellant / defendant and when the appellant / defendant appeared before the learned Additional District Judge on 15.07.2013 he was faced with the threat of arrest and was coerced into calling his son to the Court along with the cheques which were delivered.

16. Needless to state that the counsel for the respondent / plaintiff controverts any coercion and further informs that the suit filed by the respondent / plaintiff is proceeding for adjudication of the claim for the balance amount and has been put to trial.

17. The Statements recorded in execution proceedings of the judgment and decree which is impugned in this appeal definitely show that a settlement had been arrived at between the parties. Though the appellant / defendant in his Statement stated that he was handing over the cheques “without prejudice to his rights, liberty and claim”, the same were not handed over ‘without prejudice to the right to pursue the appeal’. The order dated 15.07.2013 of the execution Court also records the settlement so arrived at between the parties. The words ‘without prejudice to rights, liberty and claim’ used by the appellant/defendant in his statement in

execution proceedings are found to have been used for the reason of the balance claim of the respondent/plaintiff against the appellant/defendant pending adjudication and not for the reason of protecting the right to pursue this appeal against the judgment and decree in execution of which payment was being made. Reference in this regard can be made to *Tata Oil Mill Vs. Lokenath Chemical Works* AIR 1987 Cal. 13.

18. Once it is found that the matter has been settled, the question of the appellant / defendant remaining aggrieved from the judgment and decree does not arise. The Supreme Court in *Pushpa Devi Vs. Rajinder Singh* (2006) 5 SCC 566 has reiterated that the only remedy if any in such a situation is to approach the Court and establish that there was no compromise.

19. As far as the pleas of the appellant / defendant of there being no settlement and of the payment being made under coercion during the pendency of the appeal notice whereof had been issued are concerned, I am afraid this Court is bound to follow what is recorded in a proceeding before the Execution Court. It is worth noting that the appellant / defendant does not claim to have made any application before the Execution Court stating

that there was no settlement between the parties and the payment made and agreed to be made under the decree was in compliance of the decree and without prejudice to the right of appeal. Rather in view of the settlement, the respondent / plaintiff withdrew the execution as satisfied.

20. Be that as it may, to satisfy the judicial conscience, I have also considered the challenge to the judgment and decree on admissions on merits. The sole question for consideration therein being whether there was any admission or not.

21. In this regard, it may be noticed that the appellant / defendant in his written statement had also admitted receipt of the loan from the respondent / plaintiff with the only rider thereto being that Rs.4,29,450/- and not Rs.4,36,000/- had been disbursed to the appellant / defendant. The appellant / defendant today also does not controvert that 25 installments which were paid were of Rs.15,330/- each. It is further not disputed that total 36 installments were to be paid. It is yet further not disputed that the remaining 11 installments were to be of Rs.15,330/- each.

22. The contention of the counsel for the appellant / defendant however is that the judgment on admissions could not have been made for the reason of the appellant / defendant in the written statement having taken the pleas:

- (i) the signatures of the appellant / defendant on the documents having been obtained in blank;
- (ii) the Court not having territorial jurisdiction;
- (iii) no notice prior to the institution of the suit having been issued;
and
- (iv) the claim for interest being at a much higher rate than what was agreed.

23. As far as objection to the territorial jurisdiction is concerned, the same is that the jurisdiction should have been of the Rohini District and not of the Central District. The same, in my opinion is no objection. The division of the city of Delhi into different districts is only for convenience in administration and the litigant suffers no prejudice on this account. As far as the other pleas aforesaid are concerned, I am of the view that though they

may have relevance qua the claim of the respondent / plaintiff for the balance amount but they cannot have relevance to the claim of the respondent / plaintiff for the 11 installments of Rs.15,330/- each inasmuch as the appellant / defendant expressly admits so today also.

24. The counsel for the appellant as on the aspect of Order 12 Rule 6 CPC has relied on:

- (i) ***State Bank of India Vs. M/s Midland Industries*** AIR 1988 Delhi 153.
- (ii) ***Western Coalfields Ltd. Vs. M/s Swati Industries*** AIR 2003 Bombay 369.
- (iii) ***Deepak Rastogi Vs. Flexi Solution Pvt. Ltd.*** 2012 (191) DLT 535.
- (iv) ***Roop Chand Vs. State of J&K*** AIR 2000 J&K 43.

But the pleas raised in the written statement and on the basis whereof the argument is raised are not found to have any relevance to the part of the claim which has been decreed on admissions.

25. No error is even otherwise thus found in the judgment and decree on admissions, though I reiterate that the said aspect has been looked into only to satisfy the judicial conscience as otherwise in view of the settlement clearly recorded in the order dated 15.07.2013 in the execution proceedings, the appeal otherwise did not survive. I may record that the law also does not prohibit an appellant from, after filing the appeal, enter into a settlement.

26. There is no merit in the appeal; the same is dismissed. However, since the suit of the respondent / plaintiff for balance amount claim is still pending, no order as to costs.

Decree sheet be drawn up.

RAJIV SAHAI ENDLAW, J

AUGUST 26, 2013

‘gsr’