

THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment Pronounced on: 02.11.2011

+ CS(OS) 2537/2010

HARJINDER PAL SINGH Plaintiff
Through: Mr. S.P. Chugh, Advocate.

versus

RAVINDER SINGH ANAND Defendant
Through: Ms. Pukhraj, Advocate.

CORAM:-
HON'BLE MR JUSTICE V.K. JAIN

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| 1. Whether Reporters of local papers may be allowed to see the judgment? | No |
| 2. To be referred to the Reporter or not? | No |
| 3. Whether the judgment should be reported in Digest? | No |

V.K. JAIN, J. (ORAL)

1. A perusal of the record would show that the summon in Form 4 under Order XXXVII CPC were served upon the defendant on 9.1.2011.

2. Neither any appearance nor any Vakalatnama on behalf of the defendant was filed. When the matter came up before the Joint Registrar on 21.2.2011, learned counsel for the plaintiff informed that a notice had been sent to him by Kulbhushan Mehta & Co. stating therein that appearance

had been filed. Since neither any appearance nor any Vakalatnama in favour of Kulbhushan Mehta & Co. Advocates was on record, a notice was directed to be issued to Kulbhushan Mehta & Co. Thereafter, Vakalatnama in favour of Mr. B.S.Randhawa, Ms. Pukhraj and Mr. Atul Verma, Advocates, has been filed on 18.10.2011 and Ms. Pukhraj, Advocate, is present on behalf of the defendant.

3. Ms. Pukhraj has with her a photocopy of what purports to be an appearance on behalf of the defendant. However, the copy which she has with her does not have any diary number and she is not in a position to disclose diary number, if any, whereby the appearance may have been filed by the defendant.

4. In these circumstances, I conclude that no appearance was filed by the defendant within the prescribed period. No application for extension of time to put in appearance has been filed by the defendant. The Vakalatnama in favour of Mr. B.S.Randhawa, Ms. Pukhraj and Mr. Atul Verma, Advocates has been filed more than nine months after receipt of summon by the defendant. Since the defendant did not file appearance within the prescribed period, the plaintiff has become entitled to

judgment forthwith

5. The case of the plaintiff is that the defendant had entered into an agreement to sell his undivided half share in Flat No.G-1 measuring 3000 sq.ft super area built on the ground floor along with the basement in property No.F-10, Rajouri Garden, New Delhi to him for a consideration of Rs. 80 lacs and had received a sum of Rs.27 lacs from him as earnest money/part payment. It was also agreed between the parties that in case of breach of the agreement, the defendant would be liable to pay double the amount received from the plaintiff i.e., Rs.54 lacs. The balance sale consideration of Rs.53 lacs was payable to the defendant on/or before 18.1.2010.

6. The case of the plaintiff is that the defendant dishonestly refused to perform his part of the contract and accept the balance sale consideration. He then issued two cheques for Rs.27 lacs each drawn on State Bank of Indore, Rajouri Garden, New Delhi to him towards discharge of the liability in terms of Clause 3 of the Agreement dated 19th March, 2009. The cheques, when presented to the Bank, were dishonoured for want of funds. The plaintiff sent a notice of demand dated 4th August, 2010 to the plaintiff but

the amount of the cheques was not paid to him despite notice. The plaintiff has now claimed the principal sum of Rs.54 lacs along with interest amounting to Rs.1,20,000/- at the rate of 18% per annum, thereby making a total sum of Rs.55,20,000/-.

7. The plaintiff has placed on record the Agreement to Sell and Purchase dated 19.3.2009. The receipt of payment of Rs.27 lacs has been acknowledged in the Agreement. Clause 3 of the Agreement provides that in case of default, the first party (the vendor) will be liable to pay double of the amount paid by the vendee i.e. Rs.54 lacs. The receipt executed by the defendant in favour of the plaintiff have also been filed along with the suit. The original cheques are stated to have been filed before the Metropolitan Magistrate in a complaint which the plaintiff has filed against the defendant under Section 138 of the Negotiable Instruments Act and certified copies have been filed in the present suit. As regards interest, Section 80 of the Negotiable Instruments Act which deals with interest on Negotiable Instruments reads as under:-

Interest when no rate specified.-When no rate of interest is specified in the

instrument, interest on the amount due thereon shall, [notwithstanding any agreement relating to interest between any parties to the instrument], be calculated at the rate of [eighteen per centum] per annum, from the date at which the same ought to have been paid by the party charged, until tender or realization of the amount due thereon, or until such date after the institution of a suit to recover such amount as the Court directs.

Explanation- When the party charged is the endorser of an instrument dishonoured by non-payment, he is liable to pay interest only from the time that he receives notice of the dishonour.

8. In **Nath Sah vs. Lal Durga Sah**, AIR 1936 Allahabad, 160, a Division Bench of Allahabad High Court held that where no rate of interest is specified in a written instrument, then, notwithstanding any contract to the contrary, the interest is to be calculated at the rate of 6% per annum and the date from which such interest should be calculated should be the date on which the Principal amount ought to have been paid. In that case the suit was based on a promissory note which contained no mention of any liability to pay interest and the defendant had denied his liability to pay any interest.

9. In **Ghasi Patra vs. Brahma Thati**: AIR 1962, Orissa 35, the pronote payable on demand did not provide for payment of interest. It was contended before the High Court that under Section 80 of Negotiable Instruments Act , interest could have been allowed only from the date of demand and not for any earlier period and since no demand was proved in the case, no interest should have been allowed from the date of the execution of the pronote till the date of the suit. It was held that the plaintiff was entitled to interest under Section 80 of Negotiable Instruments Act from the date of execution of the pronote. In taking this view, the High Court followed the decision of Bombay High Court in Ganpat Tukaram v. Sopana Tukaram, AIR 1928 Bombay 35, where it was held that where a promissory note is payable on demand, but is silent as to interest, the interest can be awarded under Section 80 of Negotiable Instruments Act at 6% per annum from the date of the promissory note. A Division Bench of Patna High Court in **Bishun Chand v. Audh Bihari Lal**, AIR 1917 Pat 533 also took the view that if the handnote is payable on demand but does not provide for the payment of interest, it carries

interest at the rate of 6% per annum from the date of execution of the hand note until the realisation of the debt.

10. In **P. Mohan vs. Basavaraju** AIR 2003, Karnataka, 213, the suit was based on cheques which when presented were dishonoured. There was an agreement between the parties not to pay interest. It was held by Karnataka High Court that in view of the provisions of Section 80 of Negotiable Instruments Act, the defendant/appellant would be entitled to pay interest and that agreement between the parties not to pay interest would be valid only until the cheques were dishonoured.

11. In the case before this Court, there is no agreement between the parties that no interest will be paid by the defendant to the plaintiff. I find no justification for restricting the scope of Section 80 of Negotiable Instruments Act to only those cases, where the instrument provides for payment of interest, but the rate of interest is not specified and thereby allow unjust enrichment to a person who has defaulted in honouring his contractual obligation with respect to repayment of Principal sum. In my view, the provisions of Section 80 of Negotiable Instruments Act would equally apply to those cases where no term regarding

payment of interest is contained in the instrument. Since the aforesaid provision, as amended, carries interest at the rate of 18% per annum, consequently, the plaintiff is entitled to interest at the rate of 18% per annum under Section 80 of Negotiable Instruments Act.

The interest at the rate of 18% per annum comes to Rs.1,20,000/-.

The plaintiff, therefore, is entitled to a decree for recovery of Rs.55,20,000/- against the defendant.

A decree for Rs.55,20,000/- with costs and pendente lite and future interest at the rate of 6% per annum is hereby passed in favour of the plaintiff and against the defendant. Decree sheet be drawn up accordingly.

(V.K. JAIN)
JUDGE

NOVEMBER 02, 2011
VK