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IN THE HIGH COURT OF DELHI AT NEW DELHI

+ CS(OS) 310/2014 & I.A. No. 7002/2015(by the plaintiff u/S 151 CPC) & IA No.17101/2014(by the defendant u/O XXXVII R 3(5) CPC)

LALIT KUMAR, PROPRIETOR OF SUMAN JEWELLERY..... Plaintiff
Through Mr.Manish Sharma,
Mr.Pranay Raj Singh & Ms.Chandni Mehra,
Advocates

versus

NAGESHWAR PANDEY Defendant
Through Defendant in person with
Mr.A.K.Sinha, Advocate

CORAM:
HON'BLE MS. JUSTICE HIMA KOHLI

ORDER
27.05.2015

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1. The present order is in continuation of a detailed order passed on 19.5.2015.
2. The plaintiff has instituted the accompanying suit against the defendant under Order XXXVII CPC praying *inter alia* for recovery of a sum of ₹2,52,73,387/-, along with interest @ 18% p.a.on the principal amount.
3. On 23.12.2014, when the leave to defend application(IA No.17101/2014) filed by the defendant was listed for arguments before the predecessor Bench, the defendant had appeared in person

along with his counsel and had stated that he was willing to pay the principal amount in five installments, commencing on 1.2.2015 and ending on 1.6.2015.

4. In view of the aforesaid submission, counsel for the plaintiff had fairly stated that if the defendant adheres to the schedule that was suggested by him, then the plaintiff would not press for the interest and cost of the suit. It was recorded in the order dated 23.12.2014 that the defendant had agreed that in case the aforesaid amount is not paid to the plaintiff as per the schedule, then the leave to defend application filed by him will be dismissed and the suit will be decreed with costs. Thereafter, the case was adjourned to 27.7.2015, to await compliance by the defendant.

5. In the meantime, the plaintiff had filed the present application(IA No.7002/2015) stating inter alia that the defendant had failed to pay a penny to him despite the assurance given on 23.12.2014. Notice was issued on the application on 8.4.2015, returnable on 8.5.2015. As the lawyers were abstaining from appearing in court on 8.5.2015, the case was adjourned to 19.5.2015. On the said date, it was directed that the defendant would remain present on the next date of hearing.

6. A reply to I.A. No.7002/2015 was filed by the defendant on

06.5.2015, wherein he has reiterated his earlier undertaking to pay the entire principal amount to the plaintiff, on or before 1.6.2015.

7. On 19.5.2015, the defendant had presented himself on the first call and had admitted his default in adhering to the schedule proposed by him and recorded in the order dated 23.12.2014. However, he had reiterated his readiness and willingness to pay the entire agreed amount at one go, on or before 1.6.2015. As the court was not inclined to entertain the said request until the defendant was in a position to demonstrate his *bonafides* by paying at least the first installment of ₹50 lacs to the plaintiff, as detailed in the order dated 23.12.2014, the case was passed over. On the second call, the defendant had absented himself. Instead, his counsel had appeared and stated that the defendant was held up before a Division Bench. While refraining from passing any adverse orders against the defendant on the said date, the case was adjourned for today and last and final opportunity of one week was granted to him to bring to court a draft of the agreed amount in favour of the plaintiff. It was also clarified that in case of failure on the part of the defendant to make compliance, the order dated 23.12.2014 would be given effect to, without granting any further indulgence to him.

8. Today, the defendant appears along with his counsel and admits

that he has neither brought the draft of ₹2,52,73,387/-, nor the first instalment of Rs.50 lacs that he had agreed to pay to the plaintiff four months ago on 01.2.2015.

9. In these circumstances, this court has no option but to give effect to the order dated 23.12.2014. As a result, IA No.17101/2014 filed by the defendant for grant of leave to defend the summary suit, is dismissed. The suit is decreed in favour of the plaintiff who is entitled to recover a sum of Rs.2,52,73,387/- from the defendant with interest @ 12% p.a. from 7.2.2011, the date by which two cheques for a sum of ₹1,00,00,000/- and ₹1,50,000/- were issued by the defendant in favour of the plaintiff and were dishonoured due to insufficient funds. The plaintiff is also held entitled to costs of the suit. Decree sheet be drawn accordingly.

10. The suit is disposed of, along with pending application.

The date already fixed, i.e., 27.7.2015 stands cancelled.

HIMA KOHLI, J

MAY 27, 2015

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