

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL (L) NO.17 OF 2016

IN

SUMMONS FOR JUDGMENT NO.45 OF 2014

IN

SUMMARY SUIT NO.476 OF 2014

WITH

NOTICE OF MOTION (L) NO.71 OF 2016

WITH

APPEAL (L) 18 OF 2016

IN

SUMMONS FOR JUDGMENT NO.47 OF 2014

IN

SUMMARY SUIT NO.488 OF 2014

WITH

NOTICE OF MOTION (L) NO.72 OF 2016

WITH

APPEAL (L) NO.19 OF 2016

IN

SUMMONS FOR JUDGMENT NO.44 OF 2014

IN

SUMMARY SUIT NO.489 OF 2014

WITH

NOTICE OF MOTION (L) NO.73 OF 2016

Unity Infraprojects Limited

.....Appellant.

V/s

L & T Finance Limited

..... Respondent.

Mr. Ashish Kamat alongwith Ms. Chinmayee Pendse i/b Vidhi Partners for the Appellant.

Mr. D.D. Madon, Senior Counsel alongwith Ms. S.I. Joshi, Ms. Nikita Pawar i/b S.I. Joshi & Co. for the Respondent.

**CORAM: V. M. KANADE &
REVATI MOHITE DERE, JJ.**

**Order is reserved on 21/01/2016
Order is pronounced on 04/02/2016**

P.C.:- (Per V.M. Kanade, J.)

1. Appellant is challenging the order dated 01/12/2015 passed by the learned Single Judge. By the said order, the learned Single Judge was pleased to grant conditional leave to the Appellant to defend in the summary suits filed by the Respondent/Plaintiff. The learned Single Judge was pleased to pass a common order in three Summonses for Judgment which were taken out by the Respondent/Plaintiff in three Summary Suits for recovery of the amount claimed in each of these suits.

2. Brief facts which are relevant for the purpose of deciding these appeals are as under:-

3. One M/s Rentworks India Private Limited ("RIPL") entered into Master Rental Agreement ("MRA") dated

05/11/2007 with the Appellant/Defendant. By virtue of the said agreement, the said Company leased out assets which were referred to in the schedule annexed to the said agreement to the Defendant. Under the said agreement, Defendant agreed to pay lease rentals of Rs 9,43,65,000/- in Summary Suit No.476 of 2014, lease rentals of Rs 28,56,64,147/- in Summary Suit No.489 of 2014 and lease rentals of Rs 12,84,31,872/- in Summary Suit No.488 of 2014 to the said RIPL in 20 quarterly lease rentals in the first suit and 12 quarterly lease rentals in the second and third suit.

4. Thereafter, the said Company - RIPL executed power of attorney in favour of Respondent/Plaintiff and also executed Sale of Receivables Agreement ("SRA") in favour of the Respondent/Plaintiff. By virtue of the said agreement, lease rentals payable by the Appellant/Defendant were sold by RIPL to the Respondent/Plaintiff and the RIPL accordingly informed the Appellant/Defendant about the assignment by giving notices to the Appellant/Defendant. On account of failure on the part of the Appellant/Defendant to pay the said amount, Respondent/Plaintiff filed three Summary Suits and took out Summonses for Judgment in these three suits.

5. It is an admitted position that under the original MRA which was entered into between RIPL and the

Appellant/Defendant, Defendant agreed with RIPL that RIPL can assign or sell their rights and/or obligations under the said agreement as per clause 26 of the said agreement to any other person.

6. The learned Single Judge, by a reasoned order, granted conditional leave to defend to the Appellant/Defendant.

7. Mr. Kamat, the learned Senior Counsel appearing on behalf of the Appellant/Defendant submitted that the learned Single Judge, after having observed that the Defendant has raised some triable issues, proceeded to grant conditional leave to defend the suit. He submitted that this observation indicated that the Defendant had bonafide or reasonable defence. He submitted that having held that triable issues have been raised, the learned Single Judge ought to have granted unconditional leave to the Defendant. He relied on the judgment in *M/s Mechalec Engineers & Manufacturers vs. M/s Basic Equipment Corporation*¹

8. The learned Counsel appearing on behalf of the Appellant/Defendant then submitted that the Defendant had raised an objection that the MRA was not properly stamped and therefore could not be relied upon in any manner whatsoever. He relied on the judgment of the Apex Court in

¹ AIR 1977 SC 577

*SMS Tea Estates Private Limited vs. Chandmari Tea Company Private Limited*¹, judgment of the Madras High Court in *Yasodamal and another vs. Janaki Ammal*² and also on the judgment of this Court in *Chenbasapa and Another vs. Lakshman Ramchandra*³. He also relied on Article 5(h)(A), clause-iv of the Bombay Stamp Act. He then submitted that the Summonses for Judgment preferred by the Respondent/Plaintiff were not maintainable in law. He submitted that there was no contract between the Plaintiff and Defendant and without existence of a valid contract between the parties, suits filed by the Plaintiff were not maintainable under Order 37 Rule 1 of the Civil Procedure Code, 1908. It was then submitted that even under the MRA, as per clause 26, these rights could be assigned or sold in favour of bank only and not to anyone else. He, therefore, submitted that the order granting conditional leave was liable to be set aside and unconditional leave to defend should be granted to the Appellant/Defendant.

9. On the other hand, Mr. Madon, the learned Senior Counsel appearing on behalf of the Respondent/Plaintiff, submitted that a suit under Order 37 Rule 1 was maintainable. The obligation to receive the rent was assigned to the Plaintiff by RIPL. He submitted that as per

1 (2011) 14 SCC 66

2 AIR 1968 MADRAS 294

3 18 Bom 370 Indian Decisions, New Series Vol IX

clause 26 of the agreement between Defendant and RIPL, any rights and/or obligations under the agreement could be assigned to third party, which fact was confirmed and accepted by the Appellant/Defendant. He invited our attention to Order 37 Rule 1 and submitted that interpretation sought to be given by the Appellant/Defendant to the said provision was incorrect. So far as the submission regarding non-admissibility of the unstamped document and/or inadequately stamped document was concerned, he submitted that the said question could be decided at any stage before the suit was decided. He invited our attention to the Full Bench Judgment of this Court in *Hemendra Rasiklal Ghia & Ors. vs. Subodh Mody*¹ He submitted that on this issue regarding reliance being placed on the unstamped document, the Full Bench of this Court had in terms held that this issue could be decided at a subsequent stage. He submitted that so far as the judgments on which reliance was placed by the learned Counsel for the Appellant were concerned, those judgments were given in respect of arbitration proceedings which were pending before the Arbitral Tribunal. He submitted that therefore ratio of those judgments would not be applicable to the suits filed in the Civil Court. He then submitted that the finding which was given by the learned Single Judge that the Defendant had raised some triable issues was incorrect.

¹ 2008(6) ALL MR 352

He submitted that it was open for the Respondent in the Appellant's appeal to question the finding given by the learned Single Judge. He therefore submitted that ratio of the judgment in *M/s Mechalec Engineers & Manufacturers vs. M/s Basic Equipment Corporation*¹ on which reliance was placed by the learned Counsel for the Appellant/Defendant would not apply to the facts of this case.

10. After having heard both the Counsels at length, we are of the view that submissions made by the learned Counsel appearing on behalf of the Appellant/Defendant are without any substance. So far as his submission in respect of unstamped document is concerned, the Full Bench of this Court in *Hemendra Rasiklal Ghia* (supra) had an occasion to consider the said question and it has observed in para 92 as under:-

“Conclusions:

92. In view of the above analysis of the statutory provisions and our discussions, we accordingly, articulate our conclusions as follows:-

Answer to Question-A:

As already noticed, (i) objection to the document sought to be produced relating to the deficiency of stamp duty must be

¹ AIR 1977 SC 577

taken when the document is tendered in evidence and such objection must be judicially determined before it is marked as exhibit;

(ii) Objection relating to the proof of document of which admissibility is not in dispute must be taken and judicially determined when it is marked as exhibit;

(iii) Objection to the document which in itself is inadmissible in evidence can be admitted at any stage of the suit reserving decision on question until final judgment in the case.

The Court trying the suit or proceedings as far as possible is expected to decide the admissibility or proof of document as indicated hereinabove. As we have already added a word of caution that while exercising discretion judiciously for the advancement of the cause of justice for the reasons to be recorded, the Court can always work out its own modality depending upon the peculiar facts of each case without causing prejudice to the rights of the parties to meet the ends of justice and not to give the handle to either of the parties to protract litigation. The aim should always be to prevent mis-carriage of justice and expedite trial, which is the dire need of the time.” (Emphasis supplied)

In our view ratio of the said judgment in *Hemendra Rasiklal Ghia* (supra) would squarely apply to the facts of the present case and the said ratio is binding on this Court.

11. We are therefore of the view that the learned Single Judge has not committed any error in relegating this issue at subsequent stage. So far as the judgment of the Apex Court in *SMS Tea Estates Private Limited* (supra) on which reliance is placed by the learned Counsel for the Appellant is concerned, in our view, observations made by the Apex Court in the said judgment would not apply to the proceedings in suit. So far as the submission of the learned Counsel for the Appellant on the maintainability of the suit is concerned, the contention of the Appellant that there was no written contract is also without any substance. The original agreement between the Appellant/Defendant and RIPL clearly permitted RIPL to assign their rights to third party and, as such, under Order 37 Rule, Plaintiff is entitled to file a suit against the Defendant. The contention of the Appellant that the suits filed by the Respondent/Plaintiff are not based on the written contract is therefore without any substance. Order 37 Rul 1 reads as under:-

“ORDER XXXVII
SUMMARY PROCEDURE

[1. Courts and classes of suits to which the Order is to apply.-(1) This Order shall apply to the following Courts, namely :-

(a) High Courts, City Civil Courts and Courts of Small Causes; and

(b) other Courts:

Provided that in respect of the Courts referred to in clause (b), the High Court may, by notification in the Official Gazette, restrict the operation of this Order only to such categories of suits as it deems proper, and may also from time to time, as the circumstances of the case may require, by subsequent notification in the Official Gazette, further restrict, enlarge or vary, the categories of suits to be brought under the operation of this Order as it deems proper.

(2) Subject to the provisions of sub-rule (1), the Order applies to the following classes of suits, namely:-

(a) suits upon bills of exchange hundies and promissory notes;

(b) suits in which the plaintiff seeks only to recover a debt or liquidated demand in money payable by the defendant, with or without interest arising,-

(i) on a written contract; or

(ii) on an enactment, where the sum sought to be recovered is a fixed sum of money or in the nature of a debt other than a penalty; or

(iii) on a guarantee, where the claim against the principal is in respect of a debt or liquidated demand only]"

The interpretation which is sought to be given to Order 37 Rule 1 by the learned Counsel for the Appellant therefore cannot be accepted.

12. In our view, the Appellant/Defendant has not raised any triable issues. It is not in dispute at any stage that the amount of quarterly lease rentals was payable. It is also not in dispute that this amount as claimed by the Plaintiff in the demand notice was due and payable. The learned Single Judge therefore, in our view, erred in observing that triable defence was raised by the Defendant. In view of this finding, ratio of the judgment in *M/s Mechalec Engineers & Manufacturers* (supra) is also not applicable to the facts of the present case.

13. For the aforesaid reasons, we are not inclined to interfere with the order passed by the learned Single Judge. Appeals are therefore dismissed. Time to deposit the amount is extended by four week.

14. Appeals are accordingly disposed of. Since the Appeals are disposed of, Notices of Motion taken out therein do not survive and they are also disposed of.

(REVATI MOHITE DERE, J.)

(V.M. KANADE, J.)