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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CS(COMM) No.294/2016 & IA No.4302/2002 (under Order XXXIX
Rules 1&2 CPC).
N.S.I.C. LTD. Plaintiff

Through: Mr. Sanat Kumar, Sr. Adv. with Mr.
Yogendra Kumar Verma, Adv.

versus

MORGAN TECTRONICS LTD. AND ORS. Defendants
Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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08.11.2016

1. The plaintiff instituted this suit under Order XXXIV of the Code of Civil Procedure, 1908 (CPC) for recovery of Rs.7,44,68,050.76p jointly and severally from the defendant no.1 Morgan Tectronics Ltd. and defendants no.2&3 Mrs. Madhu Khullar and Mr. K.K. Khullar including by sale of mortgaged properties being (i) plot measuring 300 sq. yds. at no.47-48, DS Block, Bholanath Nagar, Shahdara, Delhi; (ii) plot no. 27 Block-B, Sector-10, NOIDA (UP) *ad measuring* 114 sq. mtrs.; and for permanent injunction restraining the defendants from alienating, encumbering or parting with possession of the said properties.

2. The suit was entertained and vide *ex parte ad interim* order dated 27th May, 2002 the defendants were restrained from selling, alienating or parting with possession of besides the aforesaid properties, two other properties at NOIDA being plot no.A-11, Sector-5, NOIDA *ad measuring* 820 sq. mtrs. and plot no.D-29, Sector-3, NOIDA, measuring 780 sq. mtrs.

3. The defendant no.3 Mr. K.K. Khullar is found to have been proceeded against *ex parte* on 21st September, 2005.

4. A written statement was filed by the other defendants but the need to elaborate the pleas therein is not felt as all the defendants have since been proceeded against *ex parte* and the flavour of the written statement would be evident from the issues framed in the suit on 9th January, 2006 and as reproduced hereunder.

- “1. Whether the plaintiff is entitled to a decree for recovery of Rs.7,44,68,050.76? *OPP*
2. Whether the plaintiff is entitled to a mortgage decree as prayed in the plaint? *OPP*
3. Whether the plaintiff is entitled for interest, if so, on what amount, for what period and what rate? *OPP*
4. Whether the plaintiff is entitled for a decree of permanent injunction as prayed for? *OPP*
5. Whether no legal and valid mortgage was created by defendants No. 1 and 3 in favor of plaintiff in respect of properties mentioned in para 8 of the plaint, if so, to what effect? *OPD*
6. Whether the claim of the plaintiff is barred by time? *OPD*
7. Whether the suit of the plaintiff is bad for mis-joinder of parties? *OPD*
8. Whether the defendant No.1 has suffered any loss due to any act on the part of the plaintiff or imputable to plaintiff, if so, to what effect? *OPD*
9. Relief.”

And the matter put to trial before the Joint Registrar.

5. On 4th July, 2006 evidence by way of examination-in-chief of the first witness of the plaintiff Mr. K.L. Shah examined as PW-1 was taken on record and the said witness was partly cross examined by the counsel for the defendants no.1&2 and his cross examination continued on 15th July, 2006 and 22nd July, 2006 when it was concluded and the suit re-notified for remaining evidence of the plaintiff.

6. On 19th August, 2006 it was informed that the defendant no.3 had expired on 31st May, 2006. The plaintiff applied for substitution of the legal heirs of the deceased defendant no.3 Mr. K.K. Khullar namely Mr. P.V. Khullar, V.V. Khullar and Dr. Harsha Khullar, being the children of the deceased defendant no.3 Mr. K.K. Khullar and they were substituted vide orders dated 1st November, 2007 and 9th November, 2009.

7. None appeared for the legal heirs either of the deceased defendant no.3 Mr. K.K. Khullar.

8. The defendants no.1&2 also stopped appearing and were also proceeded against *ex parte* on 5th April, 2011.

9. The plaintiff, besides examining PW-1, examined PW-2 but whose statement according to the senior counsel for the plaintiff remained inconclusive and is not to be read. The plaintiff examined other witnesses as PW-3 and PW-4 and closed its evidence.

10. The senior counsel for the plaintiff has been heard.

11. It has at the outset been enquired from the senior counsel for the plaintiff as to how the suit with respect to property situated at NOIDA can be

entertained in this court.

12. The senior counsel for the plaintiff states that one of the two mortgaged properties is situated at Delhi and though the mortgage suit with respect to NOIDA property may not be entertainable in this court, the mortgage suit with respect to the Delhi property would be entertainable in this court. He however states that it is the plea of the defendants no.1&2 in their written statement that both the properties of which the plaintiff claims mortgage have been sold by Uttar Pradesh Financial Corporation (UPFC).

13. On enquiry whether the plaintiff accepts the said plea in the written statement of the defendants no.1&2 of having sold the property at Delhi qua which only mortgage claim is pressed, the senior counsel for the plaintiff states that instruction in that regard could not be received from the plaintiff and for which reason he had at the outset sought adjournment and which has been refused.

14. I am of the view that such *ex parte* suits cannot be kept pending indefinitely. *Ex parte* evidence of the plaintiff was closed on 1st August, 2016 and the suit listed for addressing final arguments on 1st September, 2016 when adjournment was sought. While adjourning the matter on 1st September, 2016 it was made abundantly clear that no further adjournment shall be granted. Instructions if any required ought to have been obtained in the interregnum.

15. I have perused the *ex parte* evidence of the plaintiff as well as given due credence to the cross examination by the counsel of the defendants

no.1&2 of PW-1 examined by the plaintiff and find the plaintiff to have established its claim in the suit as sought.

16. Though the counsel for the defendants no.1&2 in cross examination of put to PW-1 that the property of which the plaintiff had claimed mortgage had been sold by UPFC but PW-1 denied knowledge thereof and the defendants are not found to have placed any documents on record of such sale.

17. In this view of the matter, it is deemed appropriate to, besides passing a decree for recovery of money as sought, also pass a decree for sale of the mortgaged property. Though one of the mortgaged properties at NOIDA is situated outside the territorial jurisdiction of this court but invoking Section 17 of the CPC, it is deemed appropriate to pass a decree for sale of the said property also. Reliance can be placed on *Nilkanth Balwant Natu Vs. Vidya Narasinh Bharati* AIR 1930 PC 188. I may further record that though the defendants had disputed that the properties were mortgaged but the plaintiff in its evidence is found to have proved/established equitable mortgage of the property by deposit of title deeds. Of course execution of the said decree for sale of mortgaged properties will be subject to the sale if any effected by UPFC of the said properties and rights and contentions of the purchaser if any of the said property.

18. No purpose will be served in passing a preliminary decree for sale giving an opportunity to the defendants to deposit the decretal amount since the defendants are already *ex parte*.

19. Accordingly, a decree is passed in favour of the plaintiff and against the defendants jointly and severally for recovery of Rs.7,44,68,050.76p together with interest at the rate of 19.5% per annum from the date of institution of the suit and till the date of realisation and a decree for realisation of the decretal amount by sale of properties being (i) plot measuring 300 sq. yds. at no.47-48, DS Block, Bholanath Nagar, Shahdara, Delhi; and, (ii) plot no. 27 Block-B, Sector-10, NOIDA (UP) *ad measuring* 114 sq. mtrs. is also passed.

20. The plaintiff shall also be entitled to costs of the suit from the defendants.

Decree sheet be drawn up.

RAJIV SAHAI ENDLAW, J

NOVEMBER 08, 2016

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