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

% *Date of decision 13th July, 2016*

+ C.R.P. 93/2012 & CM No.13113/2012 (stay)

INDIABULLS FINANCIAL SERVICES LTD Petitioner
Through Ms.Kanika Agnihotri & Mr.Karan
Minocha, Advocates

versus

CHANDRADEEP SINGH BHURJI Respondent
Through Mr.Surendra Yadav, Advocate

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J. (ORAL)

1. By the present petition the petitioner seeks to impugn the order dated 1.5.2012 passed by the trial Court in Execution Petition. The brief facts which led to filing of the petition are that the respondent filed a suit for mandatory injunction against the petitioner seeking directions to the defendant to return back all the original title deeds alongwith complete chain of property 3-B/77 Vishnu Garden, Delhi. The suit was filed as the petitioner had disbursed a housing loan of Rs.6,75,000/- to the respondent subject to mortgage of original title deed. The respondent is said to have made full and final payment and hence sought the original title deeds back which request the petitioner was unable to comply with.

2. In the above facts on 15.4.2011 the trial Court under Order 12 Rule 6

CPC passed a decree of mandatory injunction in favour of the respondent and against the petitioner directing the petitioner to hand over the full set of documents back to the plaintiff.

3. It is the averment of the petitioner that this order was passed ignoring that in the written statement the petitioner had clearly stated that the documents of the respondent had got misplaced somewhere in the office of the petitioner.

4. As the petitioner did not comply with the decree, an Execution Petition was filed. The impugned order notes that in the Execution proceedings the parties jointly agreed for settlement whereby the petitioner had agreed to bear the expenses for procuring the certified copies of the registered documents lost by them and had also agreed to give an indemnity bond to the respondent regarding the remaining unregistered documents. This obligation undertaken by the petitioner in the compromise had been fulfilled by the petitioner. The trial court also further noted that the further question that would arise is as to whether the decree holder/respondent is to be compensated regarding loss of these documents. The impugned order noting the provisions of Section 47 of CPC held that the executing court could interpret the decree to determine the extent of satisfaction of the decree. Hence, the determination of the compensation would be covered under Section 47 of the CPC and no separate suit would lie against the petitioner by the respondent. The impugned order framed an issue which reads as follows:-

“What should be the amount of compensation for loss of documents which JD couldn’t provide to DH?”

5. Learned counsel appearing for the petitioner has strenuously urged

that the executing court cannot go beyond a decree. The respondent never sought a decree for damages against the petitioner and no such decree was even passed against the petitioner. Hence, it is strongly urged that the executing court would have no jurisdiction to go beyond the decree and grant any compensation to the respondent. The learned counsel further submits that as noted by this Court in the earlier order that a criminal complaint has also been lodged with SHO, Police Station, Udyog Vihar, Gurgaon and a public notice in the “Weekend Business Standard” has also been published with regard to the loss of title documents of the respondent and that in view of these measures taken by the petitioner the impugned order of the executing Court framing issues was beyond its jurisdiction.

6. I may first look at the decree that was passed in favour of the respondent on 15.4.2011. The operative portion of the order of the trial Court reads as follows:

“Since the case of the plaintiff has been admitted to by the defendant in the Written Statement, I have no hesitation in holding that the plaintiff has become entitled to a decree u/O 12 R 6 CPC. Therefore, a Decree of Mandatory injunction as prayed for by the plaintiff is granted in his favour whereby the Defendants are directed to hand over the full set of “documents” back to the plaintiff. Cost of the suit is awarded to plaintiff. Let a Decree Sheet be prepared accordingly. File be consigned to Record Room.”

7. Section 47 (1) CPC reads as follows:-

“47. Questions to be determined by the Court executing decree.-

(1) All questions arising between the parties to the suit in which the decree was passed, or their representatives, and relating to the execution, discharge or satisfaction of the

decree, shall be determined by the Court executing the decree and not by a separate suit.”

8. The settled legal position is that an Executing Court cannot go behind a decree. The Supreme Court in ***Deepa Bhargava and Another vs. Mahesh Bhargava, (2009) 2 SCC 294*** held as follows:-

“9. There is no doubt or dispute as regards interpretation or application of the said consent terms. It is also not in dispute that respondent judgment-debtors did not act in terms thereof. An executing court, it is well known, cannot go behind the decree. It has no jurisdiction to modify a decree. It must execute the decree as it is. A default clause contained in a compromise decree even otherwise would not be considered to be penal in nature so as to attract the provisions of Section 74 of the Indian Contract Act.”

9. Similarly, in ***State of M.P. vs. Mangilal Sharma, (1998) 2 SCC 510*** the Supreme Court held that the Executing Court has no jurisdiction to direct payment of salary or grant any other consequential relief which does not flow directly and necessarily from the original decree. It also held that if for some reason the plaintiff does not seek some or further relief and is satisfied with a relief of declaration, he would not be entitled to seek further relief of arrears of salaries etc. The Court in para 6 held as follows:-

“6. A declaratory decree merely declares the right of the decree holder vis-a-vis the judgment debtor and does not in terms direct the judgment debtor to do or refrain from doing any particular act or thing. Since in the present case decree does not direct reinstatement or payment of arrears of salary the executing court could not issue any process for the purpose as that would be going outside or beyond the decree. Respondent as a decree holder was free to seek

his remedy for arrears of salary in the suit for declaration. The executing court has no jurisdiction to direct payment of salary or grant any other consequential relief which does not flow directly and necessarily from the declaratory decree. It is not that if in a suit for declaration where the plaintiff is able to seek further relief he must seek that relief though he may not be in need of that further relief. In the present suit the plaintiff while seeking relief of declaration would certainly have asked for other reliefs like the reinstatement, arrears of salary and consequential benefits. He was however, satisfied with a relief of declaration knowing that the Government would honour the decree and would reinstate him. We will therefore assume that the suit for mere declaration filed by the respondent-plaintiff was maintainable, as the question of maintainability of the suit is not in issue before us.”

10. We may look at the prayer which was made by the respondent in the plaint that was filed before the trial Court. Same reads as follows:-

“a. Pass a decree in form of Mandatory injunction in favour of the plaintiff and against the defendant, whereby the defendant bank, through its officials, employees etc, be directed to return back all the original title deed along with complete chain of property bearing No.3-B/77, Vishnu Garden, Delhi to the plaintiff.

b. Cost of the suit also be awarded in favour of the plaintiff and against the defendant.

c. Any other relief which this Hon’ble Court may deem fit and proper be passed in favour of the plaintiff and against the defendant in the interest of the justice.”

11. Clearly, the plaintiff/respondent was quite contented seeking a decree of mandatory injunction directing return of the original title deeds of the suit property. He did not seek any alternative relief of damages from the petitioner/defendant. Further, the defendant/petitioner filed its written

statement which is dated 28.10.2010 where it is clearly stated that the original title documents have mistakenly been misplaced in the office of petitioner/defendant. Even at that stage the respondent chose not to amend the plaint and seek damages on account of the admissions made by the petitioner/defendant that the original title documents have been lost by them.

12. In the light of the above, when the trial court passed the decree on 15.4.2011, it merely passed a decree for mandatory injunction in favour of the respondent and against the petitioner to hand over the full set of original documents. It also awarded costs of the suit. It did not award any damages to the respondent. The grant of damages, as is sought to be done by the impugned order is not a relief which flows directly and necessarily from the decree of mandatory injunction.

13. There is no decree in favour of the respondent awarding any damages in favour of the respondent. In my opinion, adjudication of damages and quantification of the same would not tantamount to execution, discharge or satisfaction of the decree as has been wrongly held by the impugned order. Accordingly, the impugned order is set aside.

14. The petition is allowed, as above.

JAYANT NATH, J.

JULY 13, 2016/n