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

\+ FAO(OS) 140/2016

ANIL SHARMA AND SONS ..... Appellant

Through Ms. Nivedita Sharma Ms. Suruchi Mittal, Advs.

versus

NATIONAL SMALL INDUSTRIES CORPORATION LTD AND ORS ..... Respondent

Through Mr. Yogender Kumar Verma, Adv. for Respondent no.1.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE ANIL KUMAR CHAWLA

O R D E R

% 17.04.2017

The instant appeal is preferred against the order dated 29.3.2016 passed by the learned Single Judge disposing IA No.25510/2015.

2. The prayer of the appellant for setting aside ex-parte order dated 27.2.2015 has been accepted and to this extent the appellant has no grievance.

3. Challenge is made to dismissal of the prayer seeking recall of order dated 7.5.2015, by which issues were framed.

4. Pursuant to compromise/settlement arrived at between the National Small Industries Corporation Limited-the plaintiff and defendant Nos.1 to 3, who are respondent Nos.1 and 2 to 4 respectively before us, on an application filed under Order XXIII Rule 3 of the Code of Civil Procedure, 1908, the following order dated 4.9.2012 was passed :

" IA No. 15494/2012 (O. 23 Rule 3 of CPC)

> This joint application has been moved by the plaintiff and defendant nos. 1 to 3 to bring on record the terms of the settlement arrived at between them.
>
> Based on the said settlement arrived at between the parties, counsel for the plaintiff submits that the present suit filed by the plaintiff may be decreed against defendant nos. 1 to 3.
>
> I have heard learned counsel for the parties.
>
> The plaintiff has filed the present suit for recovery of an amount of Rs. 9,84,07,792/-. During the pendency of the present case, the plaintiff and the defendant nos. 1 to 3 have settled their disputes and in terms of the settlement, the defendant no.1 has agreed to pay a sum of Rs.8,55,00,000/- together with interest @ 11.25% p.a. w.e.f. 19.5.2012 towards the full and final settlement of the claim of the plaintiff in the present suit. The defendant no.1 has already paid an amount of Rs.6.50 crores through various demand drafts in terms of the details given in para 5 of the present application. With the said payment having been received by the plaintiff, the plaintiff has agreed to release the title deeds of the Faridabad property and so far as Gurgaon property is concerned, the title deed shall be released by the plaintiff on receipt of payment of the remaining amount in terms of the

said settlement. The defendant no.1 has agreed to pay the balance amount of Rs.2.05 crores along with interest @11.25% on or before 31.12.2012. It has also been agreed by the parties that the interest shall be calculated on reduced balance. The defendant nos. 1 to 3 have also agreed that in the event of non payment of full settlement amount along with interest in terms of the settlement agreement, the entire suit amount along with interest and cost shall become payable by them. The present application has been duly signed by Mr.K.S. Siddiqui, Sr. Branch Manager on behalf of the plaintiff and defendant no.2 Mr. Alok Sharma on his own behalf and as Karta of defendant no.1 company.

Let decree sheet be drawn in terms of the settlement arrived at between the plaintiff and defendant nos. 1 to 3.

The present application stands disposed of accordingly."

5. The appellant is defendant no. 4 in the suit.

6. Paragraph 6(h) of the settlement/compromise agreement between the plaintiff and defendant nos. 1, 2 and 3 states that the suit would continue against the present appellant i.e. defendant no.4, and defendant nos. 5 to 8, till the time the defendant nos. 1 to 3 pay the entire settlement amount to the plaintiff along with interest.

7. Order sheets would reveal that the defendant nos. 1, 2 and 3 have not paid the full amount in terms of the settlement, which position is not disputed by the appellant (defendant no.4).

8. In the aforesaid circumstances, vide order dated 7.5.2015, the learned Single Judge framed issues, which are as under :

"(1) Whether defendant No.4 created a equitable mortgage of residential land bearing No.A-30/9, DLF, Qutab Enclave, Phase-I, Gurgaon, Haryana? If so, its effect? OPP

(2) Whether defendant No.4 is liable to pay any amount to the plaintiff? OPP

(3) Whether there is any privity of contract between the plaintiff and defendants No. 5 to 8? OPP

(4) Whether defendants No. 5 to 8 are liable to pay any amount to the plaintiff? If so, how much? OPP.

(5) Relief."

9. Counsel for the appellant (defendant no.4) submits that the appellant Hindu Undivided Family is not bound by the settlement decree dated 04.09.2012 and, in fact, the appellant had never deposited the original title deed of 30/9, DLF, Qutab Enclave, Phase-I, Gurgaon, Haryana with National Small Industries Corporation Ltd. This would be a triable issue. This is an issue framed vide order dated 7.5.2015. Parties have been directed by the same order to lead evidence. Whether or not the appellant had, in fact, deposited the title deed and mortgaged the property is a matter of evidence and would be determined in accordance with law. Issue No.2, relates to liability if any of the appellant (defendant No.2).

10. The compromise/settlement is between the plaintiff and defendant Nos.1, 2 and 3 and not defendant No.4 and 5 to 8. The compromise decree, obviously, is not binding on the appellant (defendant No.4) or defendant Nos.5 to 8. This is not the stand of the

plaintiff and also not the finding of the Single Judge. The apprehension of the appellant (defendant No.4) that the degree against defendant Nos. 1 to 3 is being enforced against them is misconceived and farfetched.

11. Counsel for the appellant submits that the plaint does not disclose any cause of action against the appellant-defendant no.4. It is also submitted that the plaintiff has not prayed for foreclosure of mortgage under Order XXXIV of the Code of Civil Procedure 1908. These aspects/questions have not been decided in the impugned order. We clarify that we have not expressed any opinion on the said aspects and leave it open for the appellant-defendant no.4, if so advised, to move an appropriate application in accordance with law.

12. With the aforesaid observation, we dismiss the appeal.

SANJIV KHANNA, J

ANIL KUMAR CHAWLA, J

APRIL 17, 2017/rc