

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

+ **RFA No. 771/2017**

% **8th September, 2017**

NEERA KHANNA Appellant
Through: Mr. V. Madhukar, Adv.

versus

GOVERNMENT OF INDIA & ORS. Respondents

CORAM:
HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. This first appeal under Section 96 of the Code of Civil Procedure, 1908 (CPC) is filed by the plaintiff in the suit impugning the judgment of the trial court dated 9.5.2017 dismissing the suit for recovery of Rs.4,60,000/- with interest.

2. In the suit filed by the appellant/plaintiff there were four defendants. Defendant no.1 was the Government of India. Defendant no.2 was the Post Master of Lodi Road Post Office, New Delhi. The main culprit being Sh. Rakesh Kumar Jain was sued as defendant no.3

in the suit but surprisingly in the suit no relief was claimed against this Sh. Rakesh Kumar Jain/defendant no.3. Defendant no.4 was Central Bank of India and whose bank drafts were stolen and used for the purchase of the disputed Kisan Vikas Patras (in short KVPs) by Sh. Rakesh Kumar Jain/defendant no.3 and from whom the appellant/plaintiff purchased the KVPs.

3.(i) The facts of the case as pleaded in the plaint were that the appellant/plaintiff purchased KVPs from the defendant no.3/Sh. Rakesh Kumar Jain for a sum of Rs.2,30,000/-, and consisting of 23 units. Appellant/plaintiff claimed that she got the KVPs transferred in her joint names with defendant no.3. It is further pleaded that when the KVPs matured on 15.4.2005, and the appellant/plaintiff became entitled to Rs.4,60,000/-, she tendered the KVPs for encashment in the month of September 2005 but since the amount was not paid by the post office hence after serving the legal notice dated 23.3.2006 the subject suit was filed.

(ii) The suit was not contested by defendant no.4/Central Bank of India, and it will be seen that this was because defendant no.4/Central Bank of India had already obtained a judgment and decree dated

18.2.2005 with respect to recovery of the amount from Sh. Rakesh Kumar Jain/defendant no.3 in the present suit and who was the defendant no.1 in the suit filed by Central Bank of India. As already stated above, mysteriously and surprisingly appellant/plaintiff did not seek any relief or recovery of monies against the defendant no.3/Sh. Rakesh Kumar Jain in the present suit.

(iii) Suit was contested by defendant nos.1 and 2 being the Govt. of India and the Post Office. Defendant nos. 1 and 2 as per their written statement pleaded that the suit was liable to be dismissed inasmuch as the disputes were already decided by the Court of Sh. Gurdeep Kumar, ADJ, Delhi vide judgment dated 18.2.2005 and which showed that Sh. Rakesh Kumar Jain had used a forged demand draft no.016736 dated 26.3.1999 for purchase of 58 KVPs of the value of Rs.5,80,000/- from Shahdara Post Office, New Delhi and this forged demand draft was one from the 1087 blank demand drafts which were stolen from Central Bank of India, District Muzaffarpur, Bihar. In the suit filed by the Central Bank of India the court had directed marking of lien of the KVPs purchased through the forged demand draft bearing number 016736 dated 26.3.1999. It was therefore pleaded that the suit be

dismissed because Sh. Rakesh Kumar Jain had no title to KVPs and therefore appellant/plaintiff who claims from Sh. Rakesh Kumar Jain would not have title to the KVPs and hence not entitled to payments under the same.

4. After pleadings were complete, the trial court framed the following issues:-

- “1) Whether the plaintiff is entitled to recover Rs.4,60,000/- along with interest against defendants no. 1 & 2 as claimed? OPP
- 2) Whether the judgment and decree dated 18.02.2005 passed by the court of Sh. Gurdeep Kumar, Ld. ADJ, Delhi in suit no. 425 of 2003/2000, titled as Central Bank of India Vs. Rakesh Kumar & Ors. is collusive, null and void as alleged? OPP
- 3) Whether the suit is liable to be dismissed in view of judgment of Sh. Gurdeep Kumar, Ld. ADJ, Delhi vide order dated 18.02.2005? OPD1 & 2.
- 4) Whether the plaintiff has no cause of action to file the present suit? OPD.
- 5) Whether the proper court fees has not been paid? OPD.
- 6) Relief.”

5. With regard to issue nos. 2 to 4 trial court has referred to extensively the judgment passed by the court of Sh. Gurdeep Kumar, ADJ, Delhi dated 18.2.2005 and which holds that lien was marked in favour of the Central Bank of India of 58 KVPs and that the defendant no.3 in the present suit had purchased the KVPs on 22.4.1999 pursuant to the forged demand draft and hence defendant no.3 would have no title and nor consequently would the present appellant/plaintiff have

title to the KVPs which the appellant/plaintiff purchased on 29.4.1999 from Sh. Rakesh Kumar Jain. The relevant observations of the trial court are contained in paras 14 and 15 of the impugned judgment and these paras read as under:-

“14. I have perused the plaint filed by the defendant no.4 against the other defendants. In the plaint, it was mentioned by the defendant no.4 i.e Central Bank of India that on 15.05.1998, a dacoity took place at the Maripur Branch of Bank in District Muzaffarpur (Bihar) and cash amount of Rs. 5.14 lacs and 1087 blank demand draft leaves (PT Nos. 16214-250, 16301-350, 16501-17500) were stolen from the bank. It was also mentioned by the defendant no.4 in the plaint that DD bearing No.016736 dated 26.03.1999 for Rs.5,80,000/- favouring Post Master, Krishna Nagar, Delhi was used encashed by defendant no.1 for purchase of Kisan Vikas Patras from Shahdara Post Office. It is mentioned that on coming to know about the fraud committed by defendant no.1 Rakesh Kumar, the plaintiff bank lodged a FIR with the Parliament Street P.S on 01.11.1999.

15. Ld. ADJ has decreed the suit against Rakesh Kumar, who is defendant no. 3 in the present suit and defendants No. 1 & 2 in the present case were directed to mark a lien of the plaintiff back on the 58 Kisan Vikas Patras No. 48 CC837127 to 837184 of Rs.10,000/- denomination each issued by defendant no. 2 in favour of defendant no. 1 and presently lying in the custody of defendant no. 3 and to refund the amount of those Kisan Vikas Patras on maturity to the plaintiff only. The plaintiff in the present case is praying that judgment dated 18.02.2005 passed by Sh. Gurdeep Kumar, Ld. ADJ be set aside as this judgment was collusive. Plaintiff has not adduced any evidence to show that judgment passed by Sh. Gurdeep Kumar, Ld. ADJ is collusive. Admittedly, defendant no. 3 has purchased Kisan Vikas Patras on 22.04.1999 and on 29.04.1999 plaintiff purchased Kisan Vikas Patras for a sum of Rs.2 lacs. The value of Kisan Vikas Patras was Rs.2,30,000/- but the plaintiff has purchased Kisan Vikas Patras for an amount of Rs.2 lacs. Moreover, plaintiff has not placed on record any document to show that she has applied for transfer of Kisan Vikas Patras in her name. Through, it is admitted fact that name of plaintiff is mentioned in all the Kisan Vikas Patras. The Kisan Vikas Patras were purchased by defendant no. 3 on 22.04.1999 and plaintiff had purchased the same on 29.04.1999 and defendant no. 4 filed suit against Rakesh Kumar, Senior Superintendent of Post Office and Post Master in the year 2000. Sh. Rakesh Kumar, who is defendant no. 3 in the present case was proceeded ex-parte and he has not filed any application for impleading her as a party in the suit pending before Sh. Gurdeep Singh Ld. ADJ. Moreover, Ld. ADJ has held

while deciding issue no. 2 & 4 that Kisan Vikas Patras of Rs.10,000/- denomination each were purchased by defendant no. 1 against the amount of forged demand draft No. 016736 dated 26.03.1999 for Rs.5,80,000/-. Therefore, defendant no. 1 cannot be deemed to be the holder in due course of said demand draft of Rs.5,80,000/-. Hence, the plaintiff is entitled to recover the aforesaid amount of Rs.5,80,000/- paid by clearing by defendant nos. 2 & 3 along with interest from the defendant no. 1 and decree of Rs.5,80,000/- was passed against the defendant no. 1 Rakesh Kumar. In issue Nos. 5 & 6, it was mentioned by Ld. ADJ that however, since the Kisan Vikas Patras were issued by defendant no. 2 and thereafter were transferred to defendant no. 3 and the same are lying in the custody of defendant no. 3, the plaintiff has got a cause of action against the defendant nos. 2 & 3 for getting the lien mark on those Kisan Vikas Patras in favour of the plaintiff bank. Plaintiff has not adduced any evidence to show that demand draft bearing No. 016736 dated 26.03.1999 for Rs.5,80,000/- which was used by the defendant no. 3 for purchasing Kisan Vikas Patras was not forged. Plaintiff has also not proved that no dacoity has taken place. No evidence has been adduced by the plaintiff that judgment dated 18.02.2005 be declared null and void. I am of the view that no reason and no evidence has been adduced by the plaintiff to prove all these issues. The plaintiff is not able to prove issue no. 2 and I am of the view that as the Ld. ADJ has passed a detailed judgment holding that defendant Rakesh Kumar had purchased Kisan Vikas Patras by using forged and fabricated demand draft, the issue Nos. 2, 3 & 4 are decided in favor of the defendant no. 1 & 2 and against the plaintiff.”

6. In my opinion, no fault can be found with the aforesaid reasoning and conclusions of the trial court because fraud vitiates everything. Also, a person who had no title cannot pass a title better than what he had and therefore once Sh. Rakesh Kumar Jain/defendant no.3 had no title to the KVPs having purchased the KVPs on the basis of the forged demand draft, the appellant/plaintiff would get no title to the KVPs in question from Sh. Rakesh Kumar Jain. As already stated above, very surprisingly, the appellant/plaintiff claimed no relief

against defendant no.3 in the present suit Sh. Rakesh Kumar Jain and which actually was the only relief which the appellant/plaintiff ought to have sought because the appellant/plaintiff claims to have been defrauded by the defendant no.3/Sh. Rakesh Kumar Jain.

7. In view of the above, I do not find any merit in the appeal. Dismissed.

SEPTEMBER 08, 2017/ib

VALMIKI J. MEHTA, J