

psv

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMMERCIAL APPEAL NO.76 OF 2018
IN
COMMERCIAL SUIT NO.387 OF 2016**

Kapil Puri	...Appellant
Vs.	
Rupinder Singh Arora	...Respondent

Mr.Rohan Cama with Ms.Neha Naik i/b. Phoenix Legal for Appellant.
Mr.Siddharth Samantaray i/b. Kanga & Co. for Respondent.

**CORAM : NARESH H. PATIL AND
G.S.KULKARNI, J.J.**

Reserved on : 16th April, 2018

Pronounced on : 3rd May, 2018

JUDGMENT (Per G.S. Kulkarni, J.)

This is defendant's appeal against the judgment and order dated 31 October 2017 whereby the learned Single Judge has decreed commercial suit No.387 of 2016 being a summary suit filed by the respondent/plaintiff in the following terms:-

- “(i) The Defendant is ordered and decreed to pay to the Plaintiff a sum of Rs.7,64,27,397/- together with further interest on the sum of Rs.5.50 Crores at the rate of 18% per annum from the date of filing of the suit till payment and or realization;*
- (ii) The Defendant shall pay to the Plaintiff costs of the suit;*
- (iii) The Plaintiff is entitled to refund of court fees, if any, as per rules;*
- (iv) The suit is accordingly disposed of;*

(v) *Issuance of certified copy of the decree is expedited.”*

2. The claim of the respondent/plaintiff in the summary suit was based on the debit note dated 5 April 2011 for Rs.4.50 Crores read with settlement agreement dated 27 September 2013. The respondent had earlier moved summons for judgment No.33 of 2016 seeking a summary decree. The same was opposed by the appellant/defendant by filing a reply. The learned Single Judge considering the defence put up by the appellant, passed an order dated 27 September 2016 on the summons for judgment holding that the defence as raised by the appellant was sham and a moonshine. The learned Judge observed that though the respondent would be entitled to a judgment, leave to defend be granted to the appellant on the appellant depositing with the Prothonotary and Senior Master, the amount of Rs.4.50 Crores within six weeks from the date of the said order. On the objection as raised by the appellant in regard to the settlement agreement dated 27 September 2013 between the parties not being adequately stamped, the learned Single Judge directed that the document be impounded. The said direction as contended in paragraph 18 of the said order reads thus:-

“18. The plaintiff has tendered the original of the settlement agreement dated 27.9.2013. This document is hereby impounded. The Prothonotary and Senior Master is directed to forward this document to the Superintendent of Stamps/Collector of Stamps, Mumbai for adjudication. Copy of the forwarding letter to be sent to the Advocate for the plaintiff and the defendant. The Superintendent of

Stamps/Collector of Stamps, Mumbai is directed to adjudicate within four weeks from receiving the document from the Prothonotary & Senior Master, High Court, Bombay. Once adjudicated, the order be communicated to the Prothonotary & Senior Master with a copy to the Advocate of the plaintiff and the defendant.

The plaintiff to pay the amount of stamp duty including penalty etc. i.e., adjudicated amount within four weeks of receiving a copy of the order. If the plaintiff is aggrieved by any such adjudication order, the plaintiff will be entitled to challenge the adjudication in accordance with Law.”

3. It is not in dispute that the appellant did not deposit the said amount of Rs.4.50 Crores as directed by the learned Single Judge in the said order passed on the summons for judgment. The appellant however, had filed an intracourt appeal (commercial appeal No.39 of 2017). By an order dated 16 November 2017, the appellate bench permitted the appellant to withdraw the said appeal, as during the pendency of the appeal the suit itself was disposed of by the impugned order. The appellate bench however reserved the appellant's right to assail both the orders namely the order passed by the learned Single Judge on the summons for judgment and the impugned order. Accordingly this appeal.

4. Mr.Cama, the learned Counsel for the appellant, has, more or less, repeated and reiterated the contentions as urged on behalf of the appellant before the learned Single Judge, in defending the summons for judgment. The principal submission is on the settlement agreement

dated 27 September 2013. Mr.Cama's contention is that the settlement agreement on the basis of which the summary suit is filed by the respondent, is of no consequence as the said agreement by virtue of clauses (6) and (8) of the said agreement was rendered null and void, in view of default of the appellant in not making payment to the respondent as per the terms and conditions of the settlement agreement. It is his submission that the very foundation of the summary suit being on this contract/settlement and the same having being rendered non-est, the appellant was entitled for unconditional leave to defend the suit. Mr.Cama in making this submission has placed reliance on “***Mrs.Raj Duggal Vs. Ramesh Kumar Bansal***”¹ to contend that as there was thus a plausible defence for the appellant.

5. Mr.Cama has also argued on the point of limitation which however according to Mr.Cama would be relevant only in regard to the debit note and not in regard to the settlement agreement for the respondent to maintain the suit in question. Mr.Cama next contends that the appellant was coerced to enter into the settlement agreement. The next contention of Mr.Cama is that the settlement agreement was not adequately stamped and thus, on this count also, the respondent would not be entitled to a summary decree.

¹ AIR 1990 SC 2218

6. On the other hand, the learned Counsel for the respondent has supported the impugned order. It is his submission that none of the contentions as urged on behalf of the appellant can be sustained. It is submitted that under the settlement in question the appellant had accepted the obligation/liability to pay the amounts in question to the respondent and merely because clauses (6) and (8) provided for a circumstance, namely that in case of a fourth consecutive default in the appellant making payment during the period of three years under the settlement, the agreement shall become null and void, cannot be read and interpreted to mean that the debt agreed to be repaid by the appellant stood extinguished. It is submitted that clauses (6) and (8) are clearly severable from the other clauses of the settlement and hence the appellant cannot dispute the admitted liability amount due and payable to the respondent/plaintiff.

7. We have heard the learned Counsel for the parties. We have perused the impugned order and the record. For the reasons we discuss *in extenso*, we are not persuaded to accept the submissions as urged on behalf of the appellant.

8. It is not in dispute that the suit as filed under the provisions of Order XXXVII of the C.P.C. was based on the debit note dated 5 April

2011 for Rs.4.50 Crores read with settlement agreement dated 27 September 2013. It is also quite clear that the suit claim as made by the respondent is in relation to an amount which was due and payable by the appellant to the respondent under a contract for Strategic Advisory Services rendered by the respondent to the appellant for the progress of the defendant's-company Spanco Limited. The appellant by a letter dated 25 October 2012 confirmed its liability of Rs.4.5 Crores towards the respondent being the fees for services rendered and had also enclosed a post dated cheque of Rs.4.5 crores dated 26 December 2012. The appellant also agreed to pay interest at the rate of 27% per annum if the payment was delayed. It is not in dispute that the appellant's cheque was dishonoured due to insufficient funds which was agreed to be replaced by the appellant, though not complied. The respondent consequently addressed a notice dated 23 January 2013 to the appellant calling upon the appellant to make payment of Rs.4.5 crores for the services rendered. The appellant never disputed that the advisory services were not rendered by the respondent. On this background, the appellant and the respondent entered into a settlement agreement dated 27 September 2013 which confirmed the appellant's liability towards the respondent for an amount of Rs.4.5 crores, for the said services rendered by the respondent. The appellant also acknowledged the dishonour of his cheque of Rs.4.5 crores issued to the respondent. This settlement

agreement was a overall compromise of all the disputes between the parties, which included withdrawal of the proceedings under Section 138 of the Negotiable Instrument Act as initiated by the respondent. Some of the clauses of the settlement agreement are required to be noted, which unequivocally demonstrate the acknowledgment of liability by the appellant towards the respondent. These clauses of the settlement read thus:-

“ WHEREAS, in terms of the engagement of the First Party, it was agreed upon that in view of valuable consideration of Strategic Advisory Services extended by the First Party to the Second Party for the progress of his Company Spanco Ltd., its Subsidiaries and Associated Companies, on an ongoing basis for the last 3 years, the Second Party would pay a lump sum amount of 4,50,00,000/- (Rupees Four Crores and Fifty Lakhs only) (Hereinafter referred to as “the due amount) to the First Party.

... ..

NOW THEREFORE THIS AGREEMENT witnessed that in consideration of the mutual covenants and undertakings herein the parties have agreed as follows:-

1. THAT the Second Party has undertaken to pay a total of Rs.1,00,00,000/- (Rupees One Crore only) as interest for the period from the date of dishonour of cheque i.e. 29th December, 2012 till 31st December, 2013 as mutually agreed between both parties. The said payment shall be made as under:

“Rs.30,00,000/- (Rupees Thirty Lacs only) on or before 30.12.2013.”

Balance Amount of Rs.70.00 lacs towards interest shall be paid in installments with interest @ 18% p.a. alongwith installments of due amount of Rs.4.50 crores.

2. THAT the Second Party has agreed to repay the due amount of Rs.4,50,00,000/- (Rupees Four Crores and Fifty Lakhs only) with interest in 36 (Thirty six) installments within a period of 3 (three) years together with balance interest amount of Rs.70.00 lacs with interest @ 8% p.a. as provided in Clause No.1 above as mentioned hereinbelow.

... ..

4. THAT it has been agreed between the Parties that the period for repayment shall remain 3 (Three) years which shall not be extended for any reason whatsoever beyond the period of three months if the defaults as mentioned in clause 5 of this agreement occurred for the last installment.

5. It has been agreed that if three consecutive defaults occurred and Second Party make the payment within 90 days from the date of default, default shall be deemed to be cured and the right of Second Party for three consecutive defaults shall revive and Second Party shall be entitled for three consecutive defaults again.”

9. It is thus clear that the settlement agreement being a contract between the parties had entitled the respondent to approach the Court under the provisions of Order 37 Rule 1 Sub-rule (2) of the Code of Civil Procedure to institute the summary suit in question and make a claim for a decree for the amounts as prayed for. It is also not in dispute that the suit on the basis of the said settlement agreement was well within limitation. As stated above the respondent had taken out a summons for judgment, the learned Single Judge considering all the defences as raised by the appellant, had passed a conditional order dated 27 September 2016 on the said summons for judgment directing the appellant to deposit an amount of Rs.4.50 crores with the Prothonotary and Senior Master within six weeks. Admittedly, the said amount was not deposited and though an appeal was preferred by the appellant and no favourable order could be obtained by the appellant in the said appeal. Consequently in terms of the provisions of Order 37 Rule 3 Sub-rule 6(b) of the C.P.C., the respondent became entitled to a

judgment on non-compliance of the conditional order dated 27 September 2016 passed by the learned Single Judge. Consequently the impugned judgment and decree has been passed by the learned Single Judge against the appellant.

10. Now we come to the contentions as urged on behalf of the appellant. In regard to the primary submission of Mr.Cama that the summary suit on the settlement dated 27 September 2013 was not maintainable, as the settlement was rendered null and void in terms of Clauses (6) and (8) of the settlement agreement, we note as to what was agreed by the parties in clauses (6) and (8) of the settlement agreement. These clauses read as under:-

6. THAT in case of fourth consecutive default during the period of three years committed by the Second Party, this agreement shall become null and void and the First Party shall be entitled to claim the entire remaining amount in one go from the Second Party. Further, in case of aforesaid defaults during the period of three years, the Second Party shall be liable to pay interest to the First Party on the due amount of Rs.4.5 crores at 18% per annum from the date of default and till the time of payment.

.....

8. THAT it has been agreed between the Parties that in case of fourth consecutive default during the period of three years committed by the Second Party as stipulated in clause 6 hereinabove, this Agreement shall become null and void and the First Party shall be entitled to resume the criminal proceedings in the above-mentioned criminal complaint and shall have the right to recover the remaining balance Dues alongwith interest @ 18% per annum from the Second Party

(emphasis added)

11. When in the circumstances as contained in clauses 6 and 8

of the settlement the parties agree to the use of the words “*this agreement shall become null and void*” in the circumstances as set out in the said causes, in our clear opinion what the parties intended and meant was that benefit of the settlement for making payment of the amount for a period of three years as agreed in clause (2) would not be available to the appellant as also the benefit of withdrawal of the proceedings before the criminal Court under Section 138 of the Negotiable Instrument Act would also not be available. The settlement agreement is required to be read in its entirety and not in a fractured manner as suggested on behalf of the appellant. Clauses (6) and (8) are clearly severable from the other clauses of the settlement and the effect of clauses (6) and (8) in no manner dilutes the admission of the debt and liability by the appellant of making payment of Rs.4.5 crores to the respondent. We therefore, reject the contention as urged on behalf of the appellant that the settlement was rendered null and void and for such reason, the respondent was not entitled to maintain the suit in question. Thus what is sufficient under the provisions of sub-rule (2) of Rule 1 of Order 37 of C.P.C. is a written contract between the parties. It cannot be denied that the settlement reflects a clear written contract between the parties.

12. In regard to the contention that the appellant was coerced

to enter into a settlement agreement, also has no basis as there is not a semblance of material to support this contention. Further the contention as urged on behalf of the appellant that the settlement was not adequately stamped and which was a valid defence for an unconditional leave, we are in complete agreement with the observations of the learned Single Judge. The Supreme Court in the case “*Hindustan Steel Limited Vs. Messrs Dilip Construction (Company)*”², and the decisions of this Court in “*Neolite Polymer Industries Pvt.Ltd. Vs. Standard Chartered Bank & Ors.*”³ and “*Wolstenholme International Ltd. Vs. Twin Stars Industrial Corporation & Ors.*”⁴, would recognise the legal principle that the Stamp Act is a fiscal measure enacted with an object to secure revenue for the State on certain classes of instruments and it is not enacted to arm a litigant with a weapon of technicality to meet the case of the opponent. Adverting to the said principles of law, the learned Single Judge directed that the document be impounded and sent for adjudication and the technical defect alleged by the appellant can be taken care of. We find that the said approach of the learned Single Judge is completely in consonance with law requiring no interference.

13. We are therefore of the clear opinion that no triable issue

2 1969(1) SCC 597

3 2007(6) Bom.C.R. 539

4 2001(4) Bom.C.R. 114

was raised by the appellant/ defendant. None of the defences as raised by the appellant/defendant can be said to be real issues so as to hold that there was a good or a plausible defence on the said assertions. In the absence of a fair dispute and there being no uncertainty in regard to the claim of the respondent/plaintiff, requiring any further inquiry into the claim, necessarily the summary suit was required to succeed. Further the tests which are prescribed in the judgment of the Supreme Court in the case *Mrs.Raj Duggal Vs. Ramesh Kumar Bansal* (supra) for a summary suit to succeed, stood completely satisfied, for the learned Single Judge to pass the orders not only on the summons for judgment under the provisions of Order 37 of C.P.C. but also decree the suit.

14. We accordingly find no merit in the appeal. It is accordingly dismissed with costs.

[G.S. KULKARNI, J.]

[NARESH H. PATIL, J.]