

\$~18

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

%

Decided on 08.03.2018

+ **FAO 412/2017 & CM APPL. 38371/2017**

GIRDHARI LAL & ORS

..... Appellants

Through: Mr. Puneet Goel, Advocate

Versus

COMPACT PACK MOULDER P LTD

..... Respondents

Through: Mr. Ankit Jain and Mr. Ankur Jain,
Advocates

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J. (Oral)

1. The learned counsel for the respondent states that he does not wish to file a reply.
2. The case is taken up for arguments.
3. This appeal impugns an order dated 19.08.2018 directing the appellants as well as respondent no. 2 to deposit an amount of Rs. 85 lacs to secure the interest of respondent no. 1/plaintiff for repayment of the loan advanced by them to respondent no. 2. The learned counsel for the appellant submits that the impugned order is erroneous because it directs private individuals/directors for repayment of loan taken by respondent no. 2 which is a corporate entity. The Court would note that although the appeal was filed, by the now arrayed respondent no. 2, as the first appellant along with

aforementioned appellant/directors, it was at the behest of the learned counsel for the appellant that on the last date of hearing, that the erstwhile appellant no. 1 has now been transposed as respondent no. 2. The amended memo of parties has not been filed despite directions to that effect.

4. The learned counsel for the appellants states that there being no privity of contract to a loan between the corporate entity, i.e., respondent no. 2 and its Directors in their individual or personal capacity, no relief can lie against the Directors to deposit the monies under Order 39 Rule 10 CPC.

5. The impugned order interpreted the said provision of law as a scheme wherein a direction can be issued for deposit of security, whenever there is an admission by a party that he holds such monies for or that it is due to another party. It then referred to portions of Written Statement filed by the appellant/defendant and observed as under:-

“8 The only point urged by the Ld. Counsel for the defendants to resist the prayer in the IA is that there is no admission of loan amount by the defendants. On the other hand, the Ld. Counsel for the plaintiff invites attention of this court to the written statement filed by the defendants in the present suit. At the preliminary objections at Para 7 (iii), there are clear cut admissions which are re-produced as under:

7 (iii) That at the time of grant of the said loan amount, the said Mr. Pradeep Aggarwal i.e. husband of the plaintiff took various blank signed cheques from the Defendant no. 1 from the account of the Defendant no. 1 and his wife Smt. Manju Aggarwal and also got their signatures on various blank and printed papers on the pretext of grant of loan and the said cheques

were taken by the husband of the plaintiff namely Pradeep Aggarwal towards security for the loan. At that time, the Defendant no. 2 and 3 did not smell any foul play of Pradeep Aggarwal herein and acted as per the dictums of the Pradeep Aggarwal, husband of the plaintiff. However, after the grant of said loan facility of Rs. One crore, the defendant company was making installments of loan amount/interest upto March, 2011. However, thereafter due to financial constraints, the Defendant no. 1 could not make the payment of interest of land and on insistence of Pradeep Aggarwal, the Defendant no.1 could not make the payment of Rs.10 lacs. In fact, out of the total loan of Rs. One crore, the Defendant no.1 paid a sum of Rs. 15 lacs and they requested to said Mr. Pradeep Aggarwal, husband of the plaintiff for making the balance payment of loan shortly. However, the intentions of Pradeep Aggarwal, became dishonest and he after misusing the blank signed cheques which were lying with him and his company initiated proceedings u/s 138 of N.I. Act."

9. After reading the above pleadings of the defendants in the written statement filed, the transaction of loan of a sum of Rs. One Crore and the alleged part payment of Rs.15 Lacs is clearly admitted by the defendants. Any amount of arguments on behalf of the defendants to deny the transaction would be only a dry argument. Therefore the point arising for determination in the IA is answered in favour of the plaintiff-applicant". (emphasis supplied)

6. In view of the aforesaid avernments, the appellants were directed to deposit an amount of Rs. 85 lacs within 30 days failing which the defence shall stand struck off. While, it is not in dispute that the loan was taken by

the corporate entity/respondent no. 2 and the loan would have ordinarily to be repaid by it, but something more transpired regarding the repayments. Of the 24 cheques issued towards repayment of the interest @ 1.5% per month, 19 cheques for Rs. 1.5 lacs each had been encashed till October, 2012. There was a default in payment of the interest from the month of November, 2012. There is stated to be some mis-communication between the parties. According to the plaintiff/respondent no. 1, a cheque of Rs. 1 crore towards discharge of their liability was presented for encashment. However, it was dishonoured and hence they moved to proceedings under section 138 of Negotiable Instrument Act, 1881. Simultaneously, they also sought recovery of the money through the suit in which the impugned order was passed. The learned counsel for the appellant relies upon an order of this Court in ***Space Enterprises vs. Srivivasa Enterprises Limited*** 1998 LawSuit(Del) 268, the relevant paras read as under:-

“12. There is no contract between the plaintiff and defendant No. 2. Therefore, case against defendant No. 2 is not based on any contract nor there is any such liability on defendant No. 2. Consequently, there is no cause of action against defendant No. 2. Since, there is no cause of action against defendant No. 2, the plaint is liable to be rejected so far as defendant No. 2 is concerned.

13. As regards defendant No. 1 the suit is certainly covered within the provisions of Order 37, Civil Procedure Code based on a written contract and defendant No. 2 cannot forestall its liability to pay under the agreement under the NIA for the dishonoured cheques etc. Accordingly, the suit is decreed under Order 37, Civil Procedure Code for recovery of Rs. 14,04,506.00 inclusive

of interest at the rate of 24% till the date of filling of the suit with pendente lite and future interest at the rate of 24% per annum on the principal sum of Rs. 10,00,000.00 with costs against defendant No. 1. Plaint is rejected against defendant No. 2”.

7. He also relies upon the judgment of this Court in RFA No. 14/2010 **Mukesh Hans & Anr. vs. Smt. Uma Bhasin & Ors.** decided on 16.08.2010.

8. Upon examination of the records adduced by appellant nos. 1 and 2, and respondent no. 2 to respondent no. 1, in particular, a legal notice dated 16.04.2013 issued on behalf of the defendants, the appellant nos. 1 and 2 admitted and undertook to repay the loan amount. Their said legal notice *inter alia* reads as under:-

“8. That again in the month of April 2011, my client(s) and you addressee(s) further orally agreed that you addressee(s) will provide a further loan of Rs.80 Lakhs to my client No.3 in addition to the previous loan of Rs. 20 lakhs, but now on reduced rate of interest @ 1.5% per month on the said total loan of Rs. 1 Crore. On demand of you addressee(s) and in discharge of duty towards the name of you addressee No.2. My client(s) also handed over one post dated cheque bearing No.857388 dated 19.04.2013 drawn on Canara Bank, Bhogal Lane, New , Delhl-110014 as a security towards discharges of liability of loan of Rs. 1 Crore towards you addressee(s). You addressee have also taken five blank cheques from the Account of my client No.3 as additional security. It was agreed between the parties that if my clients failed to pay back the said loan on or before 19.04.2013, you addressee(s) can use that cheques only on the consent and under information to my client(s).

10. That the interest of therefore loan was regularly paid by my client(s) in the name of you addressee No.2 till 20.10.2012 on said agreed rate of interest/amount.

11. That due to extreme financial crisis my client(s) stopped the payment of said cheque(s) of interest bearing cheque No.555412 amount to Rs.150,000/- dated 19.01.2012 and also interest cheque of Rs. 1,50,000/- bearing no. 555413 dated 19.12.2012 and same were not cleared from the banker of my client No. 3. Both situation were duly intimate to you addressee (s) on time telephonically”.

9. In addition to the aforesaid acknowledgment of the loan, the appellants/defendants had already admitted in their WS, as quoted hereinabove that, Pradeep Agarwal - the husband of the plaintiff had taken from Girdhari Lal – (D1) and his wife Manju Lal various signed blank cheques from the latter’s account. The cheques pertained to their private account and not of the corporate entity – R-2; that appellant nos. 1 & 2 “requested to (sic) said Mr. Pradeep Aggarwal, for making the balance payment of loan shortly”. In other words, there is a clear admission by the appellants to repay the loan on behalf of their corporate entity. Insofar as there is an acknowledgement and undertaking on behalf of two individuals – appellant nos. 1 & 2 to repay the loan on behalf of their corporate entity/respondent no. 2, the aforesaid two cited judgments would not be applicable, and the appellants would fall within the purview of Order 39 Rule 10 CPC, hence, the impugned order directing them to deposit the said monies cannot be faulted.

10. There is no reason to interfere with the same. The appeal is without merits and is accordingly dismissed.

11. Nothing stated in this order shall be deemed to the merits of the case.

NAJMI WAZIRI, J.

MARCH 08, 2018

RW

