

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

% **Date of decision: 11th July, 2018**

+ **RFA 1016/2017, CM No.43764/2017 (for stay) & CM No.43766/2017 (for condonation of 13 days delay).**

**UDDAM SINGH JAIN CHARITABLE
TRUST & ORS**

.... Appellants

Through: Mr. Praveen Kapoor, Adv.

versus

ATMA RAM BUILDERS PVT LTD

..... Respondent

Through: Mr. Amit Sethi and Mr. Ishan Khanna,
Adv. for R-1.

AND

+ **RFA 1046/2017 & CM No.45960/2017 (for stay) and CM No.45962/2017 (for condonation of 140 days delay in filing appeal).**

PRADEEP KUMAR JAIN

..... Appellant

Through: Mr. Rajesh Banati, Adv.

versus

ATMA RAM BUILDERS (P) LTD & ORS

..... Respondents

Through: Mr. Amit Sethi and Mr.
Ishan Khanna, Adv. for R-1.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. Both the First Appeals, under Section 96 of the Code of Civil Procedure, 1908 (CPC), impugn the judgment and money decree dated 31st January, 2017 in CS No.11759/2016 against the appellants in both the appeals and in favour of the respondent no.1 / plaintiff in both appeals, consequent to the dismissal of the applications filed by the appellants in both appeals for leave to defend the suit filed under Order XXXVII of the CPC.

2. Vide order dated 20th December, 2017, notice of these appeals was ordered to be issued and subject to the appellant no.1 in RFA No.1016/2017

depositing 50% of the decretal amount in this Court, execution was stayed. Only Rs.2,50,000/-, being 50% of the principal amount, and not of the decretal amount, is stated to have been deposited. The appellants are thus in non-compliance of the order subject to which stay of execution was granted.

3. Be that as it may, the counsel for the appellants in RFA No.1016/2017 has been heard.

4. The sole argument of the counsel for the appellants is that the suit has been entertained under Order XXXVII of the CPC, without there being any contract between the parties and without there being any cheque or other negotiable instrument issued by the appellants in favour of the respondent no.1 / plaintiff.

5. Having gone through the file and having found the respondent no.1 / plaintiff to have sued under Order XXXVII of the CPC, in enforcement of the clause in the registered Lease Deed between the respondent no.1 / plaintiff and the appellant no.1 Trust in RFA No.1016/2017, and of which the other appellants as well as the other respondents are trustees, and on the basis of the payment made by the respondent no.1 / plaintiff to the Land & Development Office (L&DO), Government of India, I have enquired from the counsel for the appellants, whether not his contention, of there being no contract, is factually erroneous.

6. The counsel for the appellants however insists that there is no contract and only draws attention to page 59 of the paper book, being a copy of the letter dated 15th September, 1986 of the L&DO demanding the charges for unauthorised mezzanine in the portion of 'Jain Tube' and contends

that the demand with respect to portion of Jain Tube cannot be recoverable from the appellants.

7. The aforesaid argument of the counsel for the appellants also is found to be contrary to record.

8. The counsel for the respondent no.1 / plaintiff has handed over in the Court a copy of a registered Lease Deed dated 31st December, 1982 referred to in the impugned order and which the appellants have chosen not to file. Upon the counsel for the appellants being confronted therewith, he admits that the same is on record of the Trial Court but has not been filed by the appellants before this Court.

9. The aforesaid shows that for the sake of gaining an order of admission, an argument contrary to record and on facts is being urged.

10. What has been held by the Suit Court and is otherwise borne out from the record is, (i) that the appellant no.1 Trust in RFA No.1016/2017 was a tenant in first floor with Private no.3,4,&5 and Municipal No.D-18, 19 & 20 of the building known as 'Hotel India' situated at D-Block, Connaught Place, New Delhi under the owners of the said building, on the terms and conditions contained in the Lease Deed dated 31st December, 1982. On the earlier owners of the said building transferring the same in favour of respondent No.1/plaintiff, the appellant No.1 Trust in RFA No.1016/2017 became a tenant, on the same terms, under the respondent No.1/plaintiff. Clauses 5&6 of the said Lease Deed are as under:-

“5. That the lessee shall be entitled to use the property itself or sublet the same only to the concerns in which the four trustees of the lessee namely Dr. R.N. Jain, Shri J.R.

Jain, shri S.R. Jain and Shri N.L. Jain are interested directly or indirectly namely Jain Brothers, Jain tube Company Ltd., Super Tube Pvt. Ltd., Jain Shudh Vanaspati and / or the concern of any of the said trustees.

6. That since additions, alterations and constructions have been carried out by the lessee to which the lessor now has become consenting party they shall not object to the same. However, in any case, if any amount in the shape of damages or penalty for raising such additions / alteration or construction is imposed by the L&D.O. or any amount on this account become payable to the New Delhi Municipal Committee, the same shall be payable by the lessee, the lessee shall pay the same and keep the lessor indemnified the lessor against all such actions and with regard to the damages, penalties for raising the such additional construction.”

10. The aforesaid explains the liability for the portion of Jain Tube Company Limited being enforced by the suit, from which this appeal arises, against the appellants.

11. The same also falsifies the contention of the counsel for the appellants, of there being no contract between the parties.

12. The L&DO, being the lessor of the land underneath the building, demanded the charges aforesaid for unauthorised construction in the portion of the building so leased to the appellant No.1 Trust and allowed by the appellant Trust to be occupied by Jain Tube and which were paid by the respondent no.1 / plaintiff and sought to be recovered by the respondent no.1 / plaintiff from the appellants and other respondents in these appeals, by

filing the suit under Order XXXVII and application filed by the appellants wherein for leave to defend has been dismissed.

13. I have otherwise gone through the copies of the Trial Court filed by the appellants along with the paper books and find the impugned order of dismissal of leave to defend and consequent decree against the appellants and the other respondents to be in accordance with the dicta of the Supreme Court in ***IDBI Trusteeship Services Limited Vs. Hubtown Limited*** (2017) 1 SCC 568 overruling the earlier judgment of the Supreme Court in ***Mechelec Engineers & Manufactures Vs. Basic Equipment Corporation*** (1976) 4 SCC 687. The leave to defend application of the appellants did not disclose any substantial defence to the suit within the meaning of ***IDBI Trusteeship*** supra.

14. The counsel for the appellants in RFA No.1046/2017 has chosen not to appear. In any case, having gone through the memorandum of appeal in RFA No.1046/2017, the same is not found to have urged anything different from what has been dealt with hereinabove.

15. The counsel for the appellant in RFA No.1046/2017 subsequently mentioned the matter and has been heard. He urged that under Section 25 of the Indian Trust Act, 1882, a trustee who succeeds another, is not as such liable for the acts or defaults of his predecessor.

16. The counsel, before urging so, forgets that the Indian Trusts Act, 1882 is to define and amend the law relating to Private Trusts and Trustees as distinct from a public charitable trust. The appellant no.1 Trust in RFA No.1016/2017, from its name itself is a public charitable trust and Section 25

of the Trusts Act would not be available to appellant in RFA No.1046/2017 as a trustee of said Trust.

17. No other argument has been urged.

18. No merit is thus found in the appeals which are dismissed with costs of Rs.33,000/- recoverable along with decretal amount by the respondent no.1 / plaintiff from the appellants and other respondents in both the appeals.

19. Decree sheet be prepared.

20. The amount deposited in this Court along with interest accrued therein be released in favour of the respondent no.1 / plaintiff.

RAJIV SAHAI ENDLAW, J.

JULY 11, 2018
‘PP’..

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