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

Date of Decision: 5th August, 2019

+ **CS (COMM) 860/2018 & I.A. 156/2019**

M/S JAIN FOOT COMFORTS PVT. LTD. Plaintiff
Through: Mr. Randhir Jain and Mr. Dhananjay
Jain, Advocates. (M:9560562050)
versus

SMT. JAGWATI JAIN & ANR. Defendants
Through: Mr. Umesh Suri, Advocate for
Applicants. (M:9810424804)

CORAM:
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. The present suit for recovery has been filed by the Plaintiff - M/s Jain Foot Comforts Pvt. Ltd. seeking recovery of a sum of Rs.3,97,23,640/-. The case of the Plaintiff is that the Defendants had approached the Plaintiff for financial help and a loan transaction was agreed to between the parties. The letter written by Defendant No.1 on 20th July, 2015 requested for an advance of Rs.2 crores and a sum of Rs.1.20 crores was disbursed by the Plaintiff to Defendant No. 1 on 22nd July, 2015. The same was done by way of RTGS transfer. Defendant No.2 was the guarantor. Subsequently, another loan was given by the Plaintiff to Defendant No. 1 for a sum of Rs.2.50 crores, which was requested by Defendant No.1 vide letter dated 30th August, 2015. The said amount was paid through three RTGS transfers on 16th September, 2015. In order to secure this transaction of Rs.2.5 crores, a loan agreement dated 16th September, 2015 was entered into and an equitable mortgage is claimed to have been created on properties bearing No.426 to 431, Gali

No.8, Friends Colony, G. T. Road, Shahdara, Delhi (*'suit property'*). Even this loan was guaranteed by Defendant No.2, who is the son of Defendant No.1. The loan was not returned despite request. Disputes arose between the parties.

2. Ld. Counsel for the Plaintiff invoked arbitration and a retired judge of the Meghalaya High Court was appointed as the Ld. Sole Arbitrator. During the said period, a Section 9 petition being OMP (I) No.12/2017 was filed by the Plaintiff wherein an interim settlement was entered into between the parties. The said settlement reads as under:

“(i) It is agreed by the parties that the second party had borrowed a loan from the first party and at present admitted liability payable by the second party to the first party is Rs.3,45,42,925/-.

(ii) That as a security of the loan amount, the second party had delivered the original title deeds with original chain of the five properties mentioned in the petition, plots admeasuring 183.92 sq. yards, 199.68 sq. mtrs, 94.22 sq. mtrs, 86.75 sq. mtrs and 225.72 sq. mtrs bearing nos.426 to 431 situated at Gali No.8, Friends Colony, G. T. Road, Shahadara, Delhi.

(iii) That for repayment of the loan taken from the first party, the second party has been negotiating with financial institution/other borrowers and for reimbursement of the loan amount, delivery of original title documents is requirement of another borrower.

(iv) That it is agreed by the first party that in order to cooperate with the second party, the first party shall deliver the original title documents with original chain of the above mentioned properties to the second party on 18.07.2017 and simultaneously as a security of the above said amount, the physical possession of the above said properties shall remain with the first party till 05.08.2017.

(v) It is agreed by the second party that as the reimbursement of the sanctioned loan amount is to be

done within next two weeks, therefore, the second party shall pay the admitted amount of Rs.3,45,42,925/- to the first party on or before 05.08.2017.

(vi) That as a security of the above said amount, the physical possession of the above said properties shall remain with the first party till 05.08.2017 and, if, the second party fails to make the repayment of the above said admitted amount to the first party in that case, the second party shall return the original title documents with original chain of the above said properties to the first party and the first party shall deliver the physical possession of the above properties to the second party.

(vii) The next mediation session shall be on 08.08.2017 at 3.30 pm.”

3. Despite the above admission, the Defendants did not honour the payments and hence, by order dated 9th March, 2018, the Court held that the parties were unable to settle the dispute, however, *status quo* was directed to be maintained in respect of the suit property.

4. The present suit has, thereafter, been filed by the Plaintiff on the premise that the interim settlement constitutes an admission by the Defendants that the liability of the Defendants is for a sum of Rs.3,45,42,925/-. This interim settlement, which was entered into under the aegis of the Delhi High Court Mediation and Conciliation Centre, acknowledges the amounts due in clause 1, though the disputes did not get finally settled due to non-payment by the Defendants. The settlement terms clearly show that there is no dispute to be adjudicated between the parties. The clause relied upon by Mr. Randhir Jain, Id. counsel for the Plaintiff reads as under:

“(i) It is agreed by the parties that the second party had borrowed a loan from the first party and at present

admitted liability payable by the second party to the first party is Rs.3,45,42,925/-."

5. It is submitted that the present suit is, therefore, maintainable for recovery and the arbitration clause need not be invoked by the Plaintiff. It is further submitted that a mortgage was created on the suit property and the said mortgage also stands admitted.

6. On 1st June, 2018, in the present suit, this Court had passed a restraint order in the following terms:

"Notice of this application be issued to the defendants, through all modes, returnable on 18.09.2018 and in the meanwhile the defendants are restrained from selling, alienating, encumbering or creating third party right in any manner whatsoever with regard to the subject property."

7. Another suit came to be filed in respect of this very property being CS (COMM) 974/2018 titled as *Reliance Home Finance Limited v. Jagwati Jain and Others*. The Plaintiff had in the said suit also filed a criminal complaint in which Mr. Pankaj Jain was taken into judicial custody. He was, thereafter, let out on bail. The said two suits were heard together from time to time. The said suit was disposed of vide judgment dated 6th May, 2019. In the present suit, both Defendant Nos.1 & 2 have failed to file their written statements.

8. An application being I.A. 156/2019 has come to be filed on behalf of four applicants, namely, Shri Amrit Rai Aggarwal, Shri Atul Aggarwal, Smt. Krishna Aggarwal and Shri Sameer Aggarwal, seeking impleadment in the present suit on the ground that they are the actual owners of the property in question. It is submitted by the Id. counsel for the applicants that the

applicants herein had purchased the property between 1970 to 1998 on the basis of various sale deeds, which are registered in favour of the applicants. It is submitted that any orders of attachment that may be passed by this Court against Defendant Nos.1 & 2 in respect of the same very property, would adversely affect the applicants, who are the owners.

9. The Court has heard the Id. counsel for the intervenors and the Plaintiff. None has appeared for the contesting Defendant Nos.1 & 2. A perusal of the interim settlement agreement shows that the Defendants admit both their monetary liability as also the existence of the mortgage. Under such circumstances, the submission of Id. counsel for the Plaintiff, that no dispute survives to be adjudicated, is correct.

10. The statements made in the Section 9 petition may not have resulted in a decree, inasmuch as the same arose out of proceedings seeking interim relief provisions of the Arbitration and Conciliation Act, 1996 in which while an interim settlement was recorded, the same was not adhered to by Defendant No. 1. However, the said statements could still be construed as admissions under Order XII Rule 6 CPC. The provisions of Order XII Rule 6 are clear that the admissions could be either in the pleadings, documents or 'otherwise'. In ***Nagindas Ramdas v. Dalpatram Locharam alias Brijram and Ors., AIR 1974 SC 471*** the Supreme Court has elaborated on the nature of materials that may be considered by Courts in the paragraph extracted below:

"27. From a conspectus of the cases cited at the bar, the principle that emerges is, that if at the time of the passing of the decree, there was some material before the Court, on the basis of which, the Court could be prima facie satisfied, about the existence of a statutory ground for eviction, it will be presumed that the Court was so satisfied and the decree for eviction though

apparently passed on the basis of a compromise, would be valid. Such material may take the shape either of evidence recorded or produced in the case, or, it may partly or wholly be in the shape of an express or implied admission made in the compromise agreement itself. Admissions, if true and clear, are by far the best proof of the facts admitted. Admissions in pleadings or judicial admissions, admissible under Section 58 of the Evidence Act, made by the parties or their agents at or before the hearing of the case, stand on a higher footing than evidentiary admissions. The former class of admissions are fully binding on the party that makes them and constitute a waiver of proof. They by themselves can be made the foundation of the rights of the parties. On the other hand, evidentiary admissions which are receivable at the trial as evidence, are by themselves not conclusive. They can be shown to be wrong."

11. Defendant Nos.1 & 2 have failed to file their written statements in the matter. In view of the fact that no defence has been put up and the Defendants had admitted the amounts due to the Plaintiff earlier, the suit is liable to be decreed for a sum of Rs. 3,97,23,640/- in favour of the Plaintiff and against Defendant Nos.1 & 2. Insofar as the prayer for auction of the mortgaged property is concerned, the same would be dealt with in the appropriate proceedings as the applicants/intervenors have raised questions as to the title of the property, which issue is not the subject matter of this suit.

12. The applicants in the present application being I.A.156/2019 claim title on the basis of various sale deeds. In the present suit, the title of the person who mortgaged the property or that of the applicants herein cannot be gone into. The applicants herein would have to be relegated to their remedies for establishing their title or any other relief thereto. Insofar as the

present suit is concerned, a money decree is passed in favour of the Plaintiff and against the Defendants, for a sum of Rs. 3,97,23,640, as prayed for by the Plaintiff. Interest is awarded @ 12% per annum from the date of institution of the suit till the date of payment.

13. Ld. counsel for the applicants submits that his clients have filed a suit being Civil Suit No. 12148/2016 at the Court of Sh. Vishal Singh, ADJ, Tis Hazari Court, Delhi, against Mr. Pankaj Jain and that *status quo* has been directed to be maintained in order to ensure that no third-party interest is created in the suit property. Accordingly, it is directed that *status quo* shall be maintained as to the title and possession in the suit property, for a period of three months, subject to any orders that may be passed in the suit filed by the applicants or any other court of competent jurisdiction.

14. Decree sheet be drawn up as directed above. All pending I.As. are disposed of.

AUGUST 05, 2019/dk

**PRATHIBA M. SINGH
JUDGE**