

IN THE HIGH COURT OF DELHI AT NEW DELHI

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Reserved on: 13th September, 2019

Decided on: 30th September, 2019

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CS(COMM) 473/2017

SHRI JAIPAL CHAND JAIN

..... Plaintiff

Represented by: Mr.K.K.Bhuchar, Adv.

versus

SHRI MANOJ KUMAR SINGH

..... Defendant

Represented by: Mr.Santosh Kumar, Adv. with
Mr.M.P.Singh, Mr.Rajiv Mishra,
Mr.Ajay Kumar, Ms.Simmi,
Mr.Y.R.Singh, Advs.

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CS(COMM) 474/2017

ABHISHEK JAIN

..... Plaintiff

Represented by: Mr.K.K.Bhuchar, Adv. for the
plaintiff with plaintiff in person

versus

SHRI MANOJ KUMAR SINGH

..... Defendant

Represented by: Mr.Santosh Kumar, Adv. with
Mr.M.P.Singh, Mr.Rajiv Mishra,
Mr.Ajay Kumar, Ms.Simmi,
Mr.Y.R.Singh, Advs.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

IA 10824/2018 (u/O 37 Rule 3(5) CPC) in CS (COMM) 473/2017

IA 10826/2018 (u/O 37 Rule 3(5) CPC) in CS (COMM) 474/2017

1. Plaintiffs have filed the two suits under Order XXXVII CPC seeking money decrees.

2. Case of the plaintiff in CS(COMM) 473/2017 is that on the request of the defendant, the plaintiff Jaipal Chand Jain advanced a loan through RTGS for a sum of ₹35 lakhs on 3rd February, 2016 for which he executed a promissory note dated 3rd February, 2016. Jaipal Chand Jain further advanced a loan of ₹40 lakhs through RTGS on 20th December, 2014 out of which ₹26 lakhs was paid by the defendant on 16th June, 2015. Jaipal Chand Jain also advanced a loan of ₹10 lakhs through RTGS to the defendant on 7th April, 2016 when again a promissory note of the even date to that extent was executed.

3. The defendant failed to pay the sum, however handed-over a cheque for a sum of ₹35 lakhs to the plaintiff with respect to partial payment of interest accrued which on presentation was returned unpaid with the remarks “funds insufficient”. On 3rd January, 2016 Jaipal Chand Jain served the notice of demand, however the money was not received. Hence the suit for recovery for a total sum of ₹1,01,44,600/- along with the interest that has accrued thereon.

4. As per the two promissory notes sum of ₹35 lakhs and ₹10 lakhs were to be returned with an interest of 4% per month.

5. Based on the sums advanced as noted above, through three RTGS from the plaintiff's bank account to the defendant's bank account, the plaintiff seeks the recovery of a sum of ₹1,01,44,600/- along with future interest and cost.

6. In CS(COMM) 474/2017 the plaintiff Abhishek Jain seeks a money decree for a sum of ₹2,57,92,700/-. Case of Abhishek Jain is that the defendant is carrying on business in the name of Mangalya Realtech Private Limited with its registered office at B-7, Ground Floor, Ashoka Niketan,

Nanak Vihar, Delhi. At the request of the defendant Abhishek Jain loaned a sum of ₹50 lakhs on 8th December, 2014 to the defendant through RTGS from his bank. The said amount carried an interest @ 3% per month for which a promissory note of even date was executed and that at the time of filing of the suit along with the interest that has accrued the sum entitled to be recovered from the defendant pursuant to the loan dated 8th December, 2014 was ₹93,10,000/-. Again on 10th December, 2014 Abhishek Jain advanced a sum of ₹25,00,000/- to the defendant @ interest of 3% per month for which promissory note was again executed on the same date. The interest stipulated in the promissory note was 3% per month and thus on the date of filing of the suit a total sum of ₹46,50,000/- became payable by the defendant to the plaintiff on the said note. Abhishek Jain further paid a loan of ₹35 lakhs on 11th March, 2016 at the interest of 4% per month for which a promissory note was executed on the same date and the amount that accrued towards Abhishek Jain till 30th April, 2017 was a sum of ₹54,08,700/-.

7. Two further sums of ₹30 lakhs and ₹15 lakhs were advanced as loan by Abhishek Jain to the defendant on 2nd June, 2016 and 24th June, 2016 respectively for which payments were made through RTGS. The said amount carried interest @ 4% per month and two promissory notes were executed in respect of sum of ₹30 and ₹15 lakhs on 2nd and 24th June respectively. Thus the total recovery as on 30th April, 2017 qua the two loans was ₹43,12,000/- and ₹21,12,000/- thereby amounting to a total sum of ₹2,57,92,700/-. The assertion of the plaintiff is fortified by the fact that the defendant paid interest as mentioned in the notes to the plaintiff amounting to ₹5,40,000/- on 27th February, 2015 on which he also deducted the TDS which was credited to the account of the plaintiff.

8. The amounts paid by the two plaintiffs to the defendant and the manner thereof as noted above is tabulated as under:-

S. No.	Loan advanced to Manoj Kumar Singh	Loan Advanced By	Whether Promissory Note Executed	Promissory Note Dated	Rate of Interest	Date of Advancement of Loan	Mode of advancement of loan
1.	₹ 35,00,000	Jaipal Chand Jain	Yes	3 rd February 2016	4% p.m.	3 rd February 2016	RTGS
2.	₹ 10,00,000	Jaipal Chand Jain	Yes	7 th April 2016	4% p.m.	7 th April 2016	RTGS
3.	₹ 40,00,000	Jaipal Chand Jain	No	-	3% p.m.	20 th December 2014	RTGS
4.	₹ 50,00,000	Abhishek Jain	Yes	8 th December 2014	3% p.m.	8 th December 2014	RTGS
5.	₹ 25,00,000	Abhishek Jain	Yes	10 th December 2014	3% p.m.	10 th December 2014	CASH
6.	₹ 35,00,000	Abhishek Jain	Yes	11 th March 2016	4% p.m.	11 th March 2016	CASH
7.	₹ 30,00,000	Abhishek Jain	Yes	2 nd June 2016	4% p.m.	2 nd June 2016	RTGS
8.	₹ 15,00,000	Abhishek Jain	Yes	24 th June 2016	4% p.m.	24 th June 2016	RTGS

9. By these leave to defend applications, the defendant claims that since triable issues are raised, the suits are not liable to be decreed and leave to defend is required to be granted to the defendant in the two suits.

10. The issues raised by the defendant are lack of territorial jurisdiction of this Court to entertain the suits, incorrect facts stated in the plaint and further since in the first suit ₹10 lakhs was paid as cash transaction and in the second suit two transactions were by cash, the same being illegal cannot be recovered by a money decree. Reliance in this regard is placed on the decisions of the Supreme Court reported as (1999) 3 SCC 35 Bharat Barrel & Drum Manufacturing Company Vs. Amin Chand Payrelal; (2004) 12 SCC 83 G. Pankajakshi Amma & Ors. Vs. Mathai Mathew through LRs & Anr. and 140 (2007) DLT 465 Gujrat Insecticides Ltd. Vs. Jainsons Minerals & Anr. The suit is also liable to be dismissed because the plaintiff has unauthorizedly filled-up the entry of rate of interest at 4% or 3% which has not been filled up by the defendant.

11. In support of his contention regarding lack of territorial jurisdiction, learned counsel for the defendant submits that no cause of action has arisen at Delhi and since the promissory notes were executed at Ghaziabad, the defendant also carries on its business at Ghaziabad, this Court will have no territorial jurisdiction to entertain the plaints.

12. Countering the arguments of learned counsel for the defendant, learned counsel for the plaintiffs submits that since the plaintiffs seek recovery of ascertained amount based on the transactions through RTGS and the promissory notes executed. The defendant is not entitled to leave to defend in the two suits as no triable issues are made out. The fact that money has been transacted through RTGS is not disputed, even in the leave

to defend applications. This Court clearly has the territorial jurisdiction to entertain the suit for the reason that the amount given in loan would be payable where the creditor resides and it is not disputed that the plaintiffs are residents of Delhi. Reliance in this regard is placed on the decisions of this Court reported as AIR 1984 Delhi 49 L.N. Gupta & Ors. Vs. Smt. Tara Mani and 143 (2007) DLT 693 Milkfood Limited Vs. Union Bank of India.

13. Though defendant claims that the rate of interest has been filled-up by the plaintiffs in the promissory notes, however the same is a sham defence because of the fact that there is no interpolation in the promissory notes and moreover the defendant himself has paid interest @ mentioned in the promissory notes on which TDS has also been deducted and documents in this regard have been placed on record by the plaintiffs. Learned counsel for the plaintiffs thus prays that leave to defend applications be dismissed and the suits be decreed.

14. In respect to the second issue of territorial jurisdiction of this Court to entertain the two suits, Section 20 of the CPC provides that a suit shall be instituted within the local limits of whose jurisdiction the defendant actually and voluntarily resides or carries on business or personally works for gain or where the cause of action wholly or in part arises. As per the explanation attached, a corporation shall be deemed to carry on business at its sole or principal office in India or in respect of any cause of action arising at any place where it has also a subordinate office at such place. The defendant does not dispute that it is working for gain as Mangalya Realtech Private Limited at 3250, Kucha Lalman, Delhi Gate. Hence the defendant is working for gain at Delhi.

15. Further in Milkfood Limited (supra) this Court held as under:

“25. Learned Counsel placed reliance on the judgment of learned Single Judge of this Court in V.A. Tech Esheer Wyss Flovel Ltd. v. Nippon Power Ltd, (2002) III AD (Del) 948 in support of the proposition that in matter of contracts part of the cause of action arises where the money is expressly or impliedly payable under the contract.

26. Learned Counsel for the plaintiff contended that even in the absence of a covenant in the agreement for the place of payment, Courts have consistently applied the English common rule that the place of payment is where the plaintiff is stationed as the obligation to pay a debt involves the obligation of the debtor to find the creditor at the place he is when the money becomes payable.

27. In support of his submissions learned Counsel placed reliance on a judgment of learned Single Judge of this Court in Boston Scientific International B.V. v. Metro Hospital, 136 (2007) DLT 278. In this case it was observed that even if it assumed that Delhi was not the expressly contracted place of payment, Delhi would still be the presumed place of payment because of the general rule that in the absence of a contract to the contrary, a debtor is bound to find the creditor for making the payment. The place of payment is where the creditor resides. Reference was also made to the judgment of a Division Bench of the Calcutta High Court in State of Punjab v. A.K. Raha (Engineers) Ltd., AIR 1964 Cal 418; judgment of learned Single Judge in Gappulal S/o Chandarlal v. Kanderwal Brothers, AIR 1955 M.B. 96 and of learned Single Judge of this Court in L.N. Gupta v. Smt. Tara Mani, AIR 1984 Delhi 49 wherein the rule that the debtor must find the creditor and pay the debt where the creditor resides was held applicable in India.

39. As regards the plea of the plaintiff that the debtor is bound to find the creditor for making the payment, there is no dispute in the legal principle recognized in the judgments in Boston Scientific International B.V., State of Punjab and L.N. Gupta cases (supra). The amount would be payable where the creditor resides. In view of the principle that the debtor must pay the creditor where the creditor resides, Delhi which is the

place at which the creditor/plaintiff 'resided' and from where the plaintiff wrote the letters invoking the bank guarantees would be the place at which the same were payable."

16. Thus the plea of the defendant that this Court has no territorial jurisdiction to entertain the plaint is liable to be rejected.

17. As noted in the chart in paragraph 8 above, plaintiff Jaipal Chand Jain has advanced the three loans through RTGS transactions and for two promissory notes have also been duly executed. As regards plaintiff Abhishek Jain is concerned, there are three transactions through RTGS and two through cash. However, even in respect of the cash transactions, promissory notes have been duly executed by the defendant. The only plea challenging the promissory notes and the transaction is that the rate of interest has been filled in, which plea deserves to be rejected for the reason the defendant has paid interest at the rates mentioned in the promissory notes to the plaintiff and deducted TDS thereon. Hence, the defence raised is sham.

18. Supreme Court in the decision reported as (2017) 1 SCC 568 IDBI Trusteeship Services Limited vs. Hubtown Limited, culled out the principles for grant of leave to defend following the decision reported as AIR 1965 SC 1698 Milkhiram (India) (P) Ltd. vs. Chamanlal Bros., and laid down as under:-

"17. Accordingly, the principles stated in para 8 of Mechelec Engineers & Manufacturers v. Basic Equipment Corpn. (1976) 4 SCC 687 will now stand superseded, given the amendment of Order 37 Rule 3 and the binding decision of four Judges in Milkhiram case, as follows:

17.1. If the defendant satisfies the court that he has a substantial defence, that is, a defence that is likely to succeed, the plaintiff is not entitled to leave to sign judgment, and the defendant is entitled to unconditional leave to defend the suit.

17.2. If the defendant raises triable issues indicating that he has a fair or reasonable defence, although not a positively good defence, the plaintiff is not entitled to sign judgment, and the defendant is ordinarily entitled to unconditional leave to defend.

17.3. Even if the defendant raises triable issues, if a doubt is left with the trial Judge about the defendant's good faith, or the genuineness of the triable issues, the trial Judge may impose conditions both as to time or mode of trial, as well as payment into court or furnishing security. Care must be taken to see that the object of the provisions to assist expeditious disposal of commercial causes is not defeated. Care must also be taken to see that such triable issues are not shut out by unduly severe orders as to deposit or security.

17.4. If the defendant raises a defence which is plausible but improbable, the trial Judge may impose conditions as to time or mode of trial, as well as payment into court, or furnishing security. As such a defence does not raise triable issues, conditions as to deposit or security or both can extend to the entire principal sum together with such interest as the court feels the justice of the case requires.

17.5. If the defendant has no substantial defence and/or raises no genuine triable issues, and the court finds such defence to be frivolous or vexatious, then leave to defend the suit shall be refused, and the plaintiff is entitled to judgment forthwith.

17.6. If any part of the amount claimed by the plaintiff is admitted by the defendant to be due from him, leave to defend the suit, (even if triable issues or a substantial defence is raised), shall not be granted unless the amount so admitted to be due is deposited by the defendant in court.”

19. In view of the discussion aforesaid, it is clear that the defendant has not raised any substantial defence nor any triable issue except raising a sham defence that the rate of interest is manipulated which is contradicted by his own documents, hence, this Court finds that no case for grant of leave to defend is made out to the defendant in the two suits and the two suits are liable to be decreed. Leave to defend applications are dismissed.

CS (COMM) 473/2017

1. In view of the leave to defend application having been declined, the suit filed by the plaintiff Jaipal Chand Jain is decreed in favour of the plaintiff Jaipal Chand Jain and against the defendant Manoj Kumar Singh decreeing a sum of ₹1,01,44,600/- along with interest @9% per annum from the date of institution of the suit till realization.

2. Decree sheet be prepared accordingly.

CS (COMM) 474/2017

1. In view of the leave to defend application having been declined, the suit filed by the plaintiff Abhishek Jain is decreed in favour of the plaintiff Abhishek Jain and against the defendant Manoj Kumar Singh decreeing a sum of ₹2,57,92,700/- along with interest @9% per annum from the date of institution of the suit till realization.

2. Decree sheet be prepared accordingly.

(MUKTA GUPTA)
JUDGE

SEPTEMBER 30, 2019
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