OD-2

APD/5/2020
In
CS/127/2019
IA No.:GA/1/2020(Old No.GA/740/2020)

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
ORIGINAL SIDE

JAIDEEP HALWASIYA
Versus
RISHABH BENGANI

BEFORE :
The Hon'ble JUSTICE SANJIB BANERJEE
AND
The Hon'ble JUSTICE ARIJIT BANERJEE

Date : December 15, 2020

Appearance:
Mr. Samit Talukdar, Sr. Adv.
Mr. Raj Ratna Sen, Adv.
Mr. A. P. Gomes, Adv.

Mr. Suman Kr. Dutta, Adv.

The Court : This is a bogus appeal, in support of no case at all, and the tell-tale sign is in the full stamp duty not having been tendered.

The balance stamp duty of Rs.49,500/- must be tendered by C. K. Jain & company by the close of business hours on December 16, 2020. Mr. C. K. Jain, Advocate will remain personally liable for such purpose.

The appeal is directed against a decree of February 19, 2020 passed on a petition for judgment on admission in a suit for recovery of money arising out of a loan transaction under which the respondent-plaintiff had made a sum of Rs.2 crore available to the appellant herein.

In the impugned judgment, the Single Bench found no defence having been made out to the claim. The Court relied on the undated balance confirmation of accounts for the period April 1, 2017 to March 31, 2018, the certificates evidencing tax being deducted at source in connection with the part payments made and the general lack of any credible defence in the affidavit filed on behalf of the appellant herein.

The short case of the plaintiff is apparent from a pre-suit demand notice of January 12, 2019 in which the plaintiff claimed that the defendant had approached the plaintiff for financial assistance in 2015, following which the plaintiff lent a sum of Rs.2 crore at an interest of 15% per annum. The plaintiff claimed that a sum of Rs.2,22,50,000/- remained due and owing from the appellant herein after giving credit to the part payments made. The plaintiff sought repayment of the balance amount within seven days of the receipt of the notice.

Before referring to the belated reply issued on behalf of the appellant herein to the demand of January 12, 2019, it would be helpful to notice the substance of the defence to the claim as indicated at paragraph 3(a) of the appellant's affidavit in the trial court:

> "The entire case of the petitioner is based on a purported admission on behalf of the respondent towards alleged loan transaction. It is stated and submitted that a sum of Rs.2 Crores has been issued by way of cheque/RTGS against cash. The entire amount of Rs.2 Crores had been returned to the Petitioner by cash. No amount of Rs.2

> Crores by way of loan has purportedly been acknowledged by any purported confirmation of accounts being Annexure "B" to the petition, which is forged and not issued or given by the Respondent or at the instance of the Respondent."

It is true that the appellant claimed that the "purported confirmation of accounts" was forged and had not been issued by or at the instance of the appellant, but it is plain to see that the appellant acknowledged receipt of an amount of Rs.2 crore and alleged that the entire amount was returned "by cash" to the plaintiff. Thus, the loan transaction or, at least, the receipt of a sum of Rs.2 crore from the plaintiff was acknowledged by the appellant, though the appellant asserted that such money had been returned.

It is here that the belated reply of the appellant to the demand notice of January 12, 2019 may be referred to. The rather cryptic response may be seen in its entirety:

> "I acknowledge receipt of your letter dated 22nd January, 2019 and was surprised to note the contents therein. Kindly note that the above letter was not replied earlier due to explanation given to your client. It appears that your client is not appraised about the true and correct nature of the transaction in the matter. Kindly note that I have not taken any loan as falsely alleged. I have also not agreed to pay interest at the rate of 15% as alleged. In view of false and concocted statements made by your client I do not wish to deal with in the matter any further.
>
> I hope that your client shall not take wrongful and illegal action against me as wrongfully threatened in your letter.

Thanking you."

Though no writ of summons in the suit or any notice of motion pertaining to any interlocutory application may have been served on the appellant herein by the time that the appellant issued the response of July 23, 2019 quoted above, it may do well to record that the suit was filed on or about July 8, 2019.

The stand taken in the said reply of July 23, 2019 is in stark contrast to the defence on substance sought to be made out at paragraph 3(a) of the appellant's affidavit filed in opposition to the plaintiff's petition for judgment on admission. Indeed, if the demand contained in the notice of January 12, 2019 was false, ordinary human conduct would warrant an immediate response thereto. At any rate, the belated reply of July 23, 2019, particularly in its use of the words "…I have not taken any loan as falsely alleged" jars against the subsequent assertion on oath by the appellant herein that "The entire amount of Rs.2 Crores had been returned to the Petitioner by cash."

The appellant now seeks to pick holes, not only in the balance confirmation apparently signed on behalf of the appellant but also in the certificates evidencing deduction of tax at source as relied upon by the plaintiff. The appellant claims in this Court that those TDS certificates pertained to some other transaction between the parties and had nothing to do with the claim carried by the plaintiff to Court. Such case sought to be made out in the appeal is dishonest and is completely disbelieved.

It is alarming that dishonest litigants have the temerity to try and throw wool over the Court's eyes without having any defence to a claim.

The plaintiff asserted a loan transaction of Rs.2 crore, against which some amounts had been received and the balance amount due was in excess of Rs.2.25 crore. The plaintiff relied on certain documents pertaining to the transaction. In such state of documentary evidence, the onus was squarely on the defendant to explain the other transactions which necessitated the issuance of the documents pertaining to the TDS certificates that the plaintiff had relied on. In the absence of the defendant alluding to such "other transactions", the story as to "other transactions" had, per force, to be disbelieved, as has been appropriately done by the trial court.

What is astounding is not that an impecunious or dishonest businessman does not honour a transaction; the alarming feature is that litigants think that anything would pass muster in Court and no responsibility is taken on behalf of such dishonest litigants and their wholesome untruths being parroted in Courts. The only object of the exercise appears to be to take advantage of the notorious delay in the judicial system by presenting the illusion of a claim or a defence where none exists.

The defence in this case is as bad as they come and there is no room to interfere with the impugned judgment or the consequent decree. The judgment and decree dated February 19, 2020 stand affirmed.

It is repeated that the deficit court fees must be tendered within working hours of December 16, 2020.

After the judgment is delivered, the appellant makes a prayer to pay off the amount of Rs.2 crore, as originally decreed, in instalments. The appellant says that since it was found by the trial court that there was no agreement as to interest and considering the present scenario brought about by the pandemic, the appellant should not be foisted with any burden of interest.

The plaintiff leaves the matter of instalments to Court, but says that the plaintiff is entitled to interest on the commercial transaction.

Considering the nature of the transaction and the present scenario, it appears to be fit and proper to pass a decree for Rs.2 crore in favour of the plaintiff and against the defendant-appellant together with interest at the rate of 8% per annum simple from the date of the filing of the suit till full repayment. The defendant-appellant is permitted to pay off the entire amount, calculated on a reducing balance basis, in instalments of Rs.25 lakh per month payable by the 15th of each month beginning January, 2021. In default of payment of any instalment, the plaintiff will be entitled to execute the decree for the balance sum then due.

APD No.5 of 2020 along with the interlocutory application therein, GA No.1 of 2020(Old No.GA 740 of 2020), are disposed of with costs assessed at Rs.1 lakh.

Urgent certified website copies of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(SANJIB BANERJEE, J.)

(ARIJIT BANERJEE, J.)

bp.