OD-3

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
ORIGINAL SIDE

APD/2/2023
with
CS/174/2021

SURENDRA SINGH BENGANI
VERSUS
MANTRI ENTERPRISES PVT. LTD.

BEFORE:
The Hon'ble JUSTICE SOUMEN SEN
AND
The Hon'ble JUSTICE UDAY KUMAR
Date : 26th June, 2023.

Appearance:
Mr. Rohit Banerjee, Adv.
Mr. Virendra Singh Bengani, Adv.
…for the appellant.

Mr. Nirmalya Dasgupta, Adv.
Mr. R.L. Mitra, Adv.
Ms. Priyanka Dhar, Adv.
…for the respondent.

The Court : The appeal is arising out of an order dated 23rd August, 2022 in connection with an application filed on behalf of the plaintiff for judgment upon admission.

The plaintiff filed a suit for recovery of money lent and advanced. The plaintiff claims a decree for a sum of Rs.26,11,833/- along with interest. The plaintiff is a non-banking financial institution.

Pursuant to negotiations by and between the parties, the plaintiff advanced a sum of Rs.25 lakhs to the respondent, inter alia, on the condition that the same would be repaid along with interest at the rate of 15% per annum. The said sum was advanced by the petitioner through RTGS on 21st September, 2017 to the respondent. The respondent duly received the said amount and also acknowledged the same. The respondent intermittently made payment of interest by issuance of cheques for the period 21st September, 2017 till 4th December, 2017.

In addition to the aforesaid, the respondent has also executed the loan confirmations for the period commencing from April 1, 2017 to March 21, 2018 duly signed by the respondent, inter alia, admitting that an aggregate amount of Rs.26,11,833/- is due and payable to the respondent to the plaintiff on 31st March, 2018. On 4th October, 2018, the respondent repaid a sum of Rs.10 lakhs to the plaintiff as part payment against the outstanding dues.

In the aforesaid background, the plaintiff instituted a suit and in that suit on the basis of the loan confirmations for the period 1st April, 2017 to 31st March, 2018 an application was filed for judgment upon admission.

Learned counsel for appellant submits that there is no unequivocal admission of debt. The appellant was aware of the fact that although the said money may have been directly paid to the account of the appellant, the entirety of the principal amount was, therefore, transferred in favour of Mrs. Prabha Surana, wife of the said Shanti Kumar Surana and Shanti Kumar Surana since then was in control of the bank account where such amount was deposited and he was operating the said bank account. It is further submitted that the appellant is not the beneficiary of the said amount. In this regard, the learned counsel has referred to paragraphs 15 and 16 of the affidavit-in-opposition filed in the said proceeding by the respondent. It is submitted that the aforesaid pleading clearly raise triable issue and in view of the fact that there has been no unequivocal admission of liability, the application for judgment upon admission ought not to have been allowed.

There is no denial of the fact that the entire principal amount of Rs.25 lakhs was transferred to the bank account of the respondent. The agreement is between the plaintiff and the respondent. The respondent in acknowledgement of its liability had made part payments along with interests. The respondent has executed a loan confirmation for the period 1st April, 2017 to 31st March, 2018 admitting a sum of Rs.26,77,533 as due and payable.

Although the learned Counsel for the appellant submits that the said statement was procured from the appellant on a blank paper, however, such argument is not convincing as it was incumbent upon the appellant to disclose the nature and circumstances under which such blank paper was obtained with the signature of the respondent. Even otherwise the acknowledgement of livability is clear from the transactions between the parties whereby and whereunder there is an acknowledgement of receipt of the said amount and payment of interests. The jural relationship between the plaintiff and the respondent is established. The argument that the plaintiff ought to have impleaded with Mr. Shanti Kumar Surana as he was beneficiary of the said amount is clearly not acceptable. There is no privity of contract between the plaintiff and the respondent. The plaintiff has never accepted Shanti Kumar Surana as debtor.

Learned Counsel for the appellant submits that the learned Single Judge has relied upon *Uttam Singh Duggal & Co. Ltd. vs. Union Bank of India reported (2000) 7 SCC 120* and allowed it although there are triable issues and alleged debt if any is not payable by the appellant. However, the said judgment is not applicable as in the instant case there has been clear and unequivocal admission.

The claim for the judgment upon admission is passed firstly on admission of the loan transaction. Secondly, payment of interest for the period mentioned above. Thirdly, failure to show that the entire loan has been paid.

In Uttam Singh Duggal (supra), the Hon'ble Supreme Court emphasized that the Court should not unduly narrow down the meaning of Rule 6 as the object is to enable a party to obtain speedy judgment where at least to the extent of the relief there is an admission by the defendant in a case the other party has made a plain admission entitling the former to succeed, it should apply and also wherever there is a clear admission of facts in the face of which it is impossible for the party making such admission to succeed. On the basis of the three documents on which we have relied upon, it is impossible for the appellant to deny its liability to pay the loan amount.

Under such circumstances, we do not find any reason to interfere with the judgment passed by the learned Single Judge.

The appeal being APD/2/2023 stands dismissed.

However, there shall be no order as to costs.

[SOUMEN SEN, J.]

[UDAY KUMAR, J.]

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