



\$~

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment pronounced on: 11.10.2023

+

FAO(OS)103/2019, CM Appl.23707/2019 & 38471-72/2019**RAMPAL**

... Appellant

Versus

ANJU @ ANJU BALA & ORS

... Respondent

Advocates who appeared in this case:

For the Appellant : Mr. Pradeep Dewan, Sr. Adv. with
Mr. Ujjwal Jha, Mr. Rohan Gupta, Adv

For the Respondent : Mr. Anil K. Aggarwal, Adv.

CORAM:**HON'BLE MR. JUSTICE RAJIV SHAKDHER****HON'BLE MR. JUSTICE TARA VITASTA GANJU****TARA VITASTA GANJU, J.:**

Preface.....	1
Brief facts	2
Submissions	7
Analysis	13
Conclusion.....	22

**FAO(OS) 103/2019 & CM Appl. 38471/2019/Cross Objections under
Order XLI, R22 r/w Order XLII, R2 and Section 151 of C.P.C.]**

PREFACE

1. By way of the present Appeal filed under Section 10(1) of the Delhi High Court Act, 1966, the Appellant is seeking modification of the



Judgment dated 11.04.2019 passed by the learned Single Judge in I.A. bearing no. 26045/2015 in CS(OS) No. 1159/2014 titled “*Anju and Anr.Vs. Rampal and Anr.*” [hereinafter referred to as the “Impugned Judgment”] *vide* which conditional leave to defend/contest was granted subject to the Appellant herein furnishing security in a sum of Rs.4 Crores to the satisfaction of the Registrar General for contesting the suit filed under Order XXXVII of the Code of Civil Procedure, 1908 [hereinafter referred to as the “CPC”].

BRIEF FACTS

2. The brief undisputed facts relevant in the matter are as follows:

2.1 The Appellant was the father of Late Shri Hari Om Rana [hereinafter referred to as “Deceased”] who died intestate and is the father-in-law of Respondent No. 1 and grandfather of Respondent No.2. The Deceased was involved in the business of real estate and was living separately from his father.

2.2 The Respondent No.1, wife of the Deceased along with the minor daughter of the Deceased filed a suit for recovery of monies under Order XXXVII CPC against her father-in-law, Appellant herein, alleging that monies which belong to the Deceased were wrongfully misappropriated by the Appellant after his death.

2.3 It was contended that after the death of the Deceased on 07.10.2008, the Appellant taking advantage of the fact that the Respondent No.1 was an illiterate person and the Respondent No.2 was a minor child, transferred to himself, monies belonging to the Deceased from the Deceased’s bank account(s).



2.4 The Respondent Nos. 1 and 2 had initially filed a Civil Suit bearing No. 139/2011 before the District Courts at Dwarka, Delhi [hereinafter referred to as “Dwarka Suit”], against the bankers of the Deceased, State Bank of Patiala now SBI [Respondent No. 3 herein]. Pursuant thereto, certified copies of documents pertaining to the account of the Deceased and the bank statements and fixed deposits maintained by the Deceased with the Bank were provided to Respondent Nos.1 and 2. The Dwarka Suit was disposed of by Order dated 15.11.2011.

2.5 Another suit was filed by the Respondent No. 1 under Order XXXVII against HDFC Bank, and the Appellant for recovery of Rs. 53.1 lakhs which were available in the bank account of the Deceased on the date of his death and were withdrawn after his death by the Appellant. A Coordinate bench of this Court in its judgment dated 23.05.2012 passed in CS(OS)1073/2011 [hereinafter referred to as the “2012 Judgment”] decreed the suit in favour of the Respondent No.1 herein by directing release of the amount lying in the bank account of the Deceased to the Respondent Nos. 1 and 2 herein subject to necessary formalities, and execution of an indemnity bond. It was further directed that the amount released would be subject to further orders that may be passed in any other proceedings initiated by any of the legal heirs of the Deceased, as follows:

“17. Having regard to the Section 45 (ZA) of the Banking Regulation Act, the settled position of law and the stand taken by the bank that they are prepared to release the amount in favour of the plaintiff no. 1, who is the nominee, subject to the plaintiff no. 1 complying with the necessary formalities, the present Suit is decreed on the following terms:



- (i) *it is agreed between the parties that the amounts, which were lying in the bank account of late Sh. Hari Om Rana, will be released to the plaintiffs along with interest after the statutory deduction;*
- (ii) *plaintiffs submits that the necessary formalities including execution of indemnity bond, shall be complied with by the plaintiff no. 1;*
- (iii) *counsel for the plaintiffs on instructions submits that the entire amount shall be kept in a fixed deposit in the name of minor (plaintiff no. 2) for her benefit, and in case the amount is to be utilized for purchasing of property, the property will also be purchased in the name of minor; and*
- (iv) *It is also made clear that the amount so released shall be subject to further orders which may be passed in any other proceedings which may be initiated by any of the legal heirs of the deceased, Sh. Hari Om Rana.*

18. *Accordingly, the suit is decreed in above agreed terms."*

2.6 Respondents Nos. 1 and 2 also filed a suit for declaration, partition and permanent injunction in the court of the Civil Judge, Senior Division, Gurgaon for partition of ancestral properties in which the Deceased is stated to contain a share [hereinafter referred to as "Gurgaon Civil Suit"]. The abovementioned suit is stated to be pending adjudication.

2.7 The mother of the Deceased also filed a suit i.e., Suit No. 102/2011 for declaration, partition and permanent injunction with respect of a residential property belonging to the Deceased [hereinafter referred to as "Gurgaon Suit"]. By a Judgment dated 25.01.2016, the District Court, Gurgaon passed a preliminary decree of partition declaring the mother of the Deceased and Respondent Nos. 1 and 2 to be owners in the extent of 1/3rd share each in the property in the Gurgaon Suit.

2.8 The bank account statements of the Deceased, as obtained in the Dwarka Suit, showed that the Deceased had deposited a cheque in the



sum of Rs.3,44,27,765/- towards proceeds of land sold by him on 22.02.2007. Additionally, during the period from 01.03.2007 to 08.12.2007, the cheques in the sum of Rs.50 Lakhs cumulatively and then Rs.1,86,35,000/- were issued in favour of the Appellant by the Deceased. Thereafter, an amount of Rs.55,00,000/- was paid to the Deceased by the Appellant in two installments amounting to Rs. 40,00,000 and Rs.15,00,000 dated 29.05.2007 and 11.08.2008.

2.9 Additionally, an FDR was made by the Deceased of Rs.1 Crore, which upon maturity on 08.07.2009 would have become a sum of Rs.1,19,61,682/-, but it was prematurely withdrawn by the Appellant on 02.01.2009, and a sum of Rs.1,12,19,339/- was taken.

2.10 Based on an analysis of the bank statement and records made available to Respondent Nos. 1 and 2 from the Respondent No.3/Bank, and, it was contended that the Appellant had misappropriated a sum of Rs.4,07,81,344/- from the Deceased. This led to the filing of a suit for recovery under Order XXXVII, CPC by Respondent Nos.1 and 2 against the Appellant.

2.11 The Appellant filed a leave to defend/contest, taking several objections including that the suit is barred by limitation and is not maintainable under Order XXXVII, CPC. That the mother being a Class-I legal heir of the Deceased, required to be enjoined as a party to the suit and that the suit should be barred for suppression of material facts. It was further contended that all assets were provided to the Deceased by the Appellant his entire life, but the Deceased was a habitual drunkard and gambler and squandered these away. Further,



Respondent Nos. 1 and 2 were protected by the Appellant and his family members after the brutal murder of the Deceased.

2.12 It was further contended by the Appellant, that the Deceased had borrowed money from the market and lost heavily in gambling, and thus, Appellant had given a loan to the Deceased in the sum of Rs.2 crores and had also transferred the land in Village Choma, Gurgaon, in the name of the Deceased to pay off his debts. This land was thereafter, sold about a year prior to the death of the Deceased, for a sum of Rs.3,44,27,765/- by the Deceased. It is only pursuant thereto that the Deceased had monies in his bank account with Respondent No.3/Bank.

3. The learned Single Judge by the Impugned Order granted Conditional leave to defend/contest to the Appellant subject to the Appellant furnishing security in the sum of Rs.4 crores to the satisfaction of the Registrar General of this Court within four weeks. The Respondent No.3/Bank [Defendant No.2 in the suit] was granted unconditional leave to defend/contest. It was further directed by learned Single Judge that Respondent No.3/Bank would not permit withdrawal of any amounts from the accounts of the Deceased, without prior intimation to the Respondent Nos. 1 and 2.

4. Being aggrieved by the Impugned Order, the Appellant filed the present Appeal.

4.1 Cross objections were also filed by the Respondent Nos. 1 and 2, wherein it was prayed that the Impugned Judgment granting conditional leave to defend/contest be set aside, and the suit be decreed in favour of the Respondents/Plaintiffs.



4.2 A Coordinate bench of this Court by Order dated 20.05.2019, stayed the deposit of Rs.4 Crores in the Impugned Order, while allowing the suit to continue.

4.3 Arguments were advanced by the parties and both parties filed their respective written submissions in the matter.

4.4 Along with the written submissions, Respondent Nos. 1 and 2 filed a table at Appendix A showing a calculation of the amounts due to the Respondent Nos. 1 and 2 from the Appellant. A copy of the table is extracted hereafter:

APPENDIX -A

Amount Recoverable after Adjustment of Amount Alleged Repaid				
Date of Transaction	Amount Paid	Amount Returned	Interest @18% p.a. as per Sec. 80 of NI Act	Liability on date of transaction
01-08-2007	₹ 10,00,000	0	₹ 0.00	₹ 10,00,000
17-08-2007	₹ 12,00,000	0	₹ 32,073	₹ 22,32,073
18-08-2007	₹ 22,00,000	0	₹ 12,540	₹ 60,29,523
18-12-2007	₹ 1,38,33,000	0	₹ 4,15,054	₹ 1,91,23,575
28-12-2007		₹ 57,00,000	₹ 75,648	₹ 1,24,89,274
29-05-2009		₹ 10,00,000	₹ 2,61,247	₹ 95,08,891
13-08-2009		₹ 13,00,000	₹ 3,46,794	₹ 85,59,894
08-07-2009	₹ 1,19,61,683		₹ 13,63,065	₹ 2,16,61,683
18-04-2014	(Date of filing of suit)		₹ 1,05,16,128	₹ 4,11,32,895
13-04-2015	(Date of Impugned Order)		₹ 3,62,05,941	₹ 7,65,23,140
03-10-2022	as on date		₹ 4,20,08,010	₹ 12,44,33,952

Amount Recoverable without Adjustment of Amount Alleged Repaid				
Date of Transaction	Amount Paid	Amount Returned	Interest @18% p.a. as per Sec. 80 of NI Act	Liability on date of transaction
01-08-2007	₹ 10,00,000	0	₹ 0.00	₹ 10,00,000
17-08-2007	₹ 12,00,000	0	₹ 32,073	₹ 22,32,073
18-08-2007	₹ 22,00,000	0	₹ 12,540	₹ 60,29,523
18-12-2007	₹ 1,38,33,000	0	₹ 4,15,054	₹ 1,91,23,575
08-07-2009	₹ 1,19,61,683		₹ 23,70,792	₹ 3,15,09,058
13-04-2014	(Date of filing of suit)		₹ 3,12,78,323	₹ 5,79,89,092
13-04-2015	(Date of Impugned Order)		₹ 8,08,82,882	₹ 12,88,47,745
03-10-2022	as on date		₹ 8,08,33,678	₹ 20,96,81,723

SUBMISSIONS

5. Learned Senior Counsel appearing on behalf of the Appellant has contended that the Impugned Judgment is unsustainable on the following grounds:

(i) Based on the findings returned by the learned Single Judge in the Impugned Judgment, several triable issues were raised. The learned



Single Judge has come to a conclusion that there are triable issues, and that the Appellant has a reasonable defense. Hence, the Appellant should be entitled to unconditional Leave to Defend/contest. Reliance in this regard has been placed on the case of *Milkhiram (India) Private Limited and others Vs. Chamanlal Bros.*¹ to contend that once triable issues have been raised, the Defendant [Appellant herein] is entitled to unconditional Leave to Defend/contest.

(ii) The suit instituted by the Respondents does not fall under any of the mandatory requirements of Order XXXVII, and as such the observation in the Impugned Judgment that some money has been received by the Appellant through banking channels, hence a liquidated sum, is erroneous on the face of it.

(iii) The Deceased borrowed money heavily from the market and lost it in gambling which led to a huge debt to be repaid. The proceeds of land at Village Choma, Gurgaon were used to pay back monies to moneylenders, and other persons to whom the Deceased owed money, and this was done by the Appellant only to bail out the Deceased. It was further contended that the Deceased made these transfers to the Appellant during his lifetime. It was for the same reason that the Fixed Deposit Receipt in the sum of Rs.1 Crore was encashed by the Appellant. Hence, no monies are due to the Respondent Nos. 1 and 2 by the Appellant.

(iv) The wife of the Appellant being the mother of the Deceased is a Class-I legal heir, and as such is a necessary party to the suit and

¹AIR 1965 SC 1698



therefore, the suit is bad for non-joinder of parties, and the same is not maintainable in her absence, since the recovery is alleged to be from the estate of the Deceased.

(v) Additionally, it was contended that the suit filed before the learned Single Judge was barred by limitation as more than 3 years had elapsed from the death of the Deceased on 07.10.2008 and also from when the Gurgaon Suit was instituted on 21.12.2011 by the Plaintiffs/Respondent Nos.1 and 2.

(vi) A plea was taken, that after the filing of the Gurgaon Suit for partition *qua* the property/estate of the Deceased, the present Suit could not have been filed, as part of the cause of action of the present Suit already arose in the Suit for partition filed before the Gurgaon Courts, and hence, was barred by the provisions of Order II Rule 2 CPC.

(vii) The condition of imposing condition for leave to defend/contest by the learned Single Judge is based on the presumption that the Appellant is in control of the entire estate of the Deceased and the same may be wittled away by the time the suit filed by the Respondents is adjudicated. It is contended that such a condition is in the nature of Order XXXVIII Rule 5 CPC and the same is an attachment before judgment which cannot be applied in the facts and circumstances of the present case especially wherein leave to defend/contest has been granted in favor of the Appellant.

(viii) Further, the Appellant has already distributed his properties amongst his legal heirs, including the Deceased and as such no monies are either due to the Deceased or Respondent Nos.1 and 2.



6. Learned Counsel appearing for Respondent Nos.1 and 2 has made the following submissions:

- (i) The entire sale proceeds of the land at Village Choma in the sum of Rs.3,44,27,765/- were deposited with the Defendant No.3/Bank by the Deceased. Additionally, an FDR was made by the Deceased with the Respondent No.3/Bank. After the murder of the Deceased on 07.10.2008, the Appellant took away all property and bank related documents and misappropriated large sums of money from the accounts of the Deceased. It is contended that all transactions between the Deceased and Appellant were effected through cheques, and that the suit for recovery of a debt based on negotiable instruments is maintainable under the provisions of Order XXXVII, and hence, the present suit is maintainable.
- (ii) The Appellant has also misappropriated large amount of monies amounting to Rs. 65 Lakhs from HDFC Bank Account of the Deceased by presenting three cheques bearing false signatures of the Deceased. Reliance is placed on the 2012 Judgment, of a co-ordinate bench of this Court decreeing the suit filed by Respondent Nos. 1 and 2 for misappropriation of monies from the HDFC Bank against the Appellant and other family members of the Appellant, and the Appellant is facing a criminal trial for the same.
- (iii) The Appellant was unable to show any liability of the Deceased towards the Appellant. The learned Single Judge ignored the statement made by the Appellant in his leave to defend/contest Application in paragraph 3(i) which states that *"in all the Defendant No. 1 during the*



said period has paid back more than Rs.2 Crores to the Deceased against the alleged loan of Rs.1,86,35,000/-” has been overlooked, showing the admitted liability of the Appellant towards the Deceased.

(iv) The Impugned Order at paragraph 9 erroneously relies upon on a false statement ignoring paragraph 3(h) of the Leave to Defend/contest, wherein the transfer of the land at Village Choma, and the consequent deposit of Rs.3.44 Crores in the account of the Deceased, has not been denied. Once the land had been sold by the Deceased, the Appellant could not claim any rights in the said land. Hence, the Appellant has no right, interest and claim the aforesaid sale proceeds deposited in the account of the Deceased.

(v) The sale proceeds of the sale of land at Village, Choma could not be claimed as a loan by the Appellant being barred by the provisions of Prohibition of Benami Property Transactions Act, 1988, and hence, no triable issues have been raised.

(vi) A suit for recovery for non-gratuitous transfers is covered under Section 70 of the Indian Contract Act [hereinafter referred to as “Contract Act”] and is therefore, maintainable under Order XXXVII Rule 1 (2)(b)(ii). In this regard, reliance is placed on judgments ***K.S. Satyanarayan Vs. V.R. Narayana Rao***² and ***Jatin Koticha Vs. VFC Industries Pvt. Ltd.***³. It is further stated that the Supreme Court has clarified and held in ***K.S. Satyanarayan (supra)*** that an obligation to refund monies under Section 70 of Contract Act “*is not founded upon*

² (1999) 6 SCC 104

³ 2008 (92) Bom Cr 155



any contract or tort but upon a third category of law, namely, quasi-contract or restitution” and in such situations, existence of a written contract is neither possible nor required.

(vii) *Qua* the objection of non-joinder of parties with respect to the mother of the Deceased, the Respondent No.1 relies on the judgment dated 25.01.2016 in the Gurgaon Suit filed by the mother of the Deceased, to submit that since the Deceased's mother had by deliberate omission not chosen to sue for his movable assets, she has relinquished her claims, rights and interests in other properties of the Deceased. Hence, this objection by the Appellant is not maintainable.

(viii) In response to the objection on maintainability of the suit under Order II Rule 2, CPC, it is contended that the partition suit pending before the Gurgaon Court pertains to rights in the ancestral properties of the Deceased while the present case is with respect to the self-acquired property of the Deceased, and hence, this objection is not maintainable either.

(ix) On limitation, it is contended by Respondent Nos.1 and 2 that pursuant to the cases filed by the Respondents at Gurgaon, the knowledge of the transactions were made available to Respondent Nos.1 and 2 by Respondent No.3/Bank only *vide* Order dated 15.11.2011 passed in the Dwarka Suit, and hence, the concerned suit is well within limitation.

7. Although, initially there was representation on behalf of Respondent No.3/Bank. None appeared during arguments. No written submissions have been filed by Respondent No.3/Bank either. Since the



Impugned Order grants the Respondent No.3/Bank, unconditional leave to defend/contest the Suit, no adjudication is required on that aspect of the matter.

ANALYSIS:

8. As stated above, the Impugned Order granted additional leave to Appellant subject to furnishing security in the sum of Rs.4 crores to the satisfaction of the Registrar General of this Court which has been challenged in the present proceedings. Additional directions *qua* Respondent No.3/Bank restraining them from withdrawal of any amounts from the accounts of the Deceased, without informing Respondent Nos. 1 and 2.

8.1 It is the contention of Respondent Nos. 1 and 2 in his Cross-Objections that a decree in the sum of Rs.4,07,81,344/- should be passed by the Court under the provisions of Order XXXVII, CPC since, these amounts were admittedly taken from the Bank Account of the Deceased, by his father, the Appellant herein.

8.2 By an Order dated 20.05.2019, a Coordinate bench of this Court had directed that the condition of grant of leave/contest in the Impugned Order shall remain stayed.

8.3 The question that thus arises before this Court is whether the learned Single Judge has correctly exercised discretion by granting conditional leave requiring the Appellant to furnish security in the sum of Rs. 4 Crores.

9. An analysis of the record shows that the following facts are undisputed:



9.1 A sum of Rs.3,44,27,765/- was deposited by the Deceased in State Bank of Patiala [now State Bank of India/Respondent No.3] from the sale proceeds of the land situated at Village, Choma, Gurgaon.

9.2 From the proceeds of Rs.3.44 Crores (approx.), various sums were transferred to the Appellant by the Deceased during his lifetime.

9.3 An FDR in the sum of Rs.1 Crore was created by the Deceased from the monies in this bank account, which was withdrawn by the Appellant on 02.01.2009. On the date of such withdrawal, the amount available was Rs.1,12,19,339/-.

9.4 Thus, the amounts encashed/withdrawn/transferred from the Bank Account of the Deceased are as below:

(i) On 01.03.2007, 17.05.2007 and 16.06.2007, a cumulative total of Rs.50,00,000/- was paid by the Deceased to the Appellant by three cheques;

(ii) On 22.06.2007, a fixed deposit was made by the Deceased in the sum of Rs.1 crore;

(iii) On 18.12.2007, a sum of Rs.1,36,35,000/- was paid by the Deceased to the Appellant through bank transfer;

(iv) On 02.01.2009, a sum of Rs.1,12,19,339/- was withdrawn by the Appellant from the Bank Account of the Deceased. However, the Respondent Nos.1 and 2 have claimed Rs.1,19,61,682/- which is the maturity value of the FDR as of 08.07.2009.

9.5 The Respondent Nos. 1 and 2 have claimed a sum of Rs.4,07,81,344/- in the following manner:



S.No.	Reason	Amount
i.	Loan given to Appellant by the Deceased.	Rs.50,00,000/-
ii.	Loan given to Appellant by Deceased from bank account.	Rs.1,36,35,000/-
iii.	FDR wrongly encashed by Appellant.	Rs.1,19,61,682/-
	Total Claim with Interest thereon	Rs.4,07,81,344/-

10. The Appellant has contended that there was no loan transaction between the parties and the transactions relied upon by the Respondent Nos. 1 and 2 were all during the lifetime of the Deceased. The Appellant has further contended that all land sold by the Deceased in fact land belonged to the Appellant and hence, no monies are due to the Respondent Nos. 1 and 2 by the Appellant.

10.1 The Respondent Nos. 1 and 2 have relied on the pleadings of the Appellant [Defendant No.1 in the suit] to contend that the Appellant has taken contradictory stands in his Application for Leave to Defend/contest, which are clearly false. In paragraph 3(h) of the leave to defend filed by the Appellant it is claimed by the Appellant that the Appellant transferred the land at Village, Choma, Gurgaon to the Deceased to clear the debts of the Deceased as follows:

“(h) That the deceased was not doing very well with his so-called real estate business as he was on selling lands that belong to Defendant no.1 and living off the sale money. Without prejudice to the rights of the Defendant no.1 it is respectfully submitted that the land allegedly described in Village Choma, Gurgaon, was in the name of the Defendant no.1 and since the deceased had borrowed money heavily from the market as well as lost heavily in gambling he was under a lot



*of debt which had to be repaid and it is for that reason the Defendant no.1 had transferred the above said land in the name of the deceased. **That after the sale was made a sum of approximately Rs. 3.44 crores came to the account of the deceased of which the part which was not required for the purposes of clearing the debts and other liabilities of the deceased was transferred to the account of the Defendant no.1.** All this transfer of money from the said sale took place during the lifetime of the deceased. It also pertinent to mention here that the sale of the abovestated and took place about a year prior to the death of the deceased”.*

[Emphasis is ours]

10.2 However, at paragraph 3(i) of the leave to defend, it is contended by the Appellant that the transfer of Rs.1,36,35,000/- was made on an emergency basis for fear of the account being sealed as follows:

“.....It was further submitted that the sum of Rs.1,36,35,000/- was transferred to the account of the Defendant No.1 on emergency basis since landed deal with M/s. Puri Constructions went bad and deceased was afraid that his bank account may be sealed and seized and he would lose the said sum of money. That soon thereafter another bank account was opened by the deceased in which the Defendant No.1 transferred Rs. 67 lacs, Rs. 40 lacs, Rs. 15 lacs.....”

[Emphasis is ours]

10.3 It is thus contended by Respondent Nos.1 and 2 that the Appellant has not been able to show any adequate reason for the transfers made from the bank accounts of the Deceased and that these are loans taken by the Appellant.

11. The Impugned Order has held that the maintainability of the Suit under Order XXXVII is not disputed as the monies have been paid through banking channels and the same is a liquidated sum.

11.1 The Impugned Order further holds that since there is no loan agreement and documents admitting liability, the conditional leave to defend has to be granted. Further, since the Appellant is in control of the



entire estate, the estate may be wittled away by the time the suit is adjudicated. It is in these circumstances, that the learned Single Judge granted conditional leave to defend to the Appellant subject to a security of Rs.4 crores, which finding has been challenged by both the Appellant and Respondent Nos.1 and 2.

12. The Appellant does not dispute the bank account statements of the Deceased which were obtained from the District Courts at Dwarka, Delhi. Since, all transactions have been affected through cheques or bills of exchange, the provisions of Order XXXVII are applicable.

12.1 The records in this case shows the following:

- (i) Principal Amount claimed by Respondent Nos.1 and 2 – Rs.1,36,35,000 + Rs.50,00,000 + Rs.1,19,61,682 = Rs. 3,05,96,682/-
- (ii) Suit filed for Rs.4,07,81,344/-. Thus, a sum of Rs. 1,01,84,662/- has been claimed as interest by Respondent Nos.1 and 2 for the period from 01.03.2007 to the date of the filing of the suit, i.e., 16.04.2014.
- (iii) *Pendente lite* and future interest has also been claimed.

12.2 The transactions made between Appellant and the Deceased during his lifetime are :

Date	Deposit (Rs.)	Withdrawals to Appellant (Rs.)
DEPOSIT- 22.02.2007	3,44,27,765/-	
01.03.2007		10,00,000/-
17.05.2007		15,00,000/-
16.06.2007		25,00,000/-



18.12.2007	1,36,35,000/-
BALANCE- 25.12.2007	Rs. 1,57,92,765/-
Date	Deposit/Returns by Appellant (Rs.)
26.12.2007	67,00,000/-
28.05.2008	40,00,000/-
11.08.2008	15,00,000/-
BALANCE – 07.10.2008 [date of death]	Rs.2,79,92,765/-

12.3 Hence, as on the date of death (07.10.2008), a sum of Rs.2,79,92,765/- was available in the bank account of the Deceased as per the transactions between the Respondent Nos. 1 and 2 and the Appellant.

12.4 In addition, an FDR of Rs. 1 crore was also available in the Deceased's bank account on that day.

13. The Appellant has also raised several contentions *qua* the fact that these monies did not belong to the Deceased. While the Respondents 1 and 2 contend that the monies were loaned to the Appellant by the Deceased, and he was liable to return them.

13.1 Although the Appellant [Defendant No.1 in the Suit] has claimed that no amounts are due to Respondent Nos. 1 and 2, the factum of transfers of monies in the sum of Rs.1,36,35,000/- & Rs.50,00,000/- (Rs.1,86,35,500/-) from the account of the Deceased to the Appellant cannot be denied. The explanation of the Appellant that the monies in the sum of Rs.1,86,35,500/- were taken for repayment of bad debts of the



Deceased, does not quite add up since four months later, Rs.1,22,00,000/- (67,00,000/- + 40,00,000/- + 15,00,000/-) was returned by the Appellant to the Deceased.

13.2 However, neither does the contention of the Respondent Nos.1 and 2 that these were loan payments and returns made by the Appellant, as none of the figures actually tally. The explanation qua Rs.50,000/- loan taken in 2007 and Rs.55,000/- returned in 2008 will also require trial. Evidence will be required to be led with respect to the contentions of Respondent Nos. 1 and 2 as set forth in the Table annexed at paragraph 4.4 above as well.

14. The Supreme Court in the case of **IDBI Trusteeship Services Limited v. Hubtown Limited**⁴ has set forth circumstances where in leave to defend should be granted or refused and in what circumstances conditions should be imposed. The relevant extract is below:

"17. Accordingly, the principles stated in para 8 of Mechelec case [Mechelec Engineers & Manufacturers v. Basic Equipment Corpn., MANU/SC/0043/1976: (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 [Milkhiram (India) (P) Ltd. v. Chamanlal Bros., MANU/SC/0376/1965: AIR 1965 SC 1698: (1966) 68 Bom LR 36], 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.

⁴ (2017) 1 SCC 568



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.

14.1 Respondent No.1 and 2 have contended that the monies claimed by them were loans given by the Deceased to the Appellant, however, no loan agreement has admittedly been produced. While Appellant has contended that the amounts of Rs.1,36,35,000/- and Rs.50,00,000/- were not loans but monies belonging to the Appellant used for property business deals, however some contradictions have been made in the leave to defend application including which have been reproduced in paragraph 10 above. The Table reproduced at paragraph 12.2 above shows that the bank statement of the Deceased reflected both deposits and withdrawal between the Appellant and the Deceased.

14.2 The interest component of Rs. 1,01,84,662/- has been claimed by Respondent Nos.1 and 2 is also not based on any written agreement or



pursuant to Section 3 of the Interest Act, 1978 and will need to be proved.

14.3 The Appellant has thus raised triable issues and is granted leave to defend the case for the amounts of Rs.1,36,35,000/- and Rs.50,00,000/- with interest thereon, in accordance with law.

15. However, so far as concerns the encashment of the FDR of Rs.1,12,19,339/- by the Appellant from the bank account of the Deceased, this was done on 02.01.2009, which is admittedly after his demise. The Appellant has stated that the FDR was encashed by the Appellant as he was the nominee of the Deceased in terms of the FDR.

15.1 The Supreme Court in ***Ram Chander Talwar and Anr. Vs. Devender Kumar Talwar and Others***⁵, has while interpreting subsection (2) of Section 45ZA of the Banking Regulation Act, 1949 has held that nominee only steps into the shoes of the depositor after his death, however, he does not become the owner of the money lying therein as follows:

“5. Section 45ZA(2) merely puts the nominee in the shoes of the depositor after his death and clothes him with the exclusive right to receive the money lying in the account. It gives him all the rights of the depositor so far as the depositor's account is concerned. But it by no stretch of imagination makes the nominee the owner of the money lying in the account. It needs to be remembered that the Banking Regulation Act is enacted to consolidate and amend the law relating to banking. It is in no way concerned with the question of succession. All the monies receivable by the nominee by virtue of section 45 ZA(2) would, therefore, form part of the estate of the deceased depositor and devolve according to the rule of succession to which the depositor may be governed.”

[Emphasis is ours]

⁵(2010) 10 Supreme Court Cases 671



15.2 Thus, the Appellant as a nominee to the bank account of the Deceased, could receive the money from the account after the death of the Deceased, but could not claim a right to such money, the monies in the account, which would devolve upon his Class I legal heirs in the accordance to the Hindu Succession Act, 1956.

15.3 In these circumstances, the defence raised although is plausible, the genuineness thereof is to be proved at trial. Thus, leave to defend/contest is to be granted to the Appellant, but this amount is to be secured in terms of the *IDBI Trusteeship* case.

CONCLUSIONS

16. The Impugned Order is modified and Leave to defend is granted conditionally to the Appellant, subject to his furnishing security in the sum of Rs.1.20 crores to the satisfaction of the Registrar General of this Court within six weeks from the date of this judgment.

17. The foregoing directions are being passed without prejudice to the rights and contentions of the parties to take all the objections including which have been set forth in the present Appeal, during the trial before the learned Single Judge.

18. Accordingly, the Appeal and the Cross objections are disposed off in the above mentioned terms. All pending Application(s) stand closed.

19. There shall be no order as to costs.

TARA VITASTA GANJU, J

RAJIV SHAKDHER, J

OCTOBER 11, 2023/r.