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

Date of decision: 06.12.2023

+ CM(M) 1600/2023 & CM APPLs. 50410/2023, 50417/2023

SH. VINAY GOYAL & ANR.

..... Petitioners

Through: Mr. Ravish Kumar Goyal, Mr. Pawan Kaushik, Mr. Nitin Sharma and Mr. Hitesh Sharma, Advocates

versus

SH. AJAY GUPTA

..... Respondent

Through: Mr. Naresh Gupta and Mr. Shantanu Aggarwal, Advocates

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CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T

MANMEET PRITAM SINGH ARORA, J (ORAL):

1. This petition filed under Article 227 of the Constitution of India impugns two (2) orders both dated 25.08.2023 passed by the District Judge, Commercial Court-03, Shahdara District, Karkardooma Courts, Delhi ('Commercial Court') in CS Comm. No. 326/2020, titled as **Ajay Gupta v. Vinay Goyal & Anr.**

1.1. The Petitioners herein are the defendants and Respondent herein is the plaintiff before Trial Court.

1.2. The mother of the Respondent i.e., late Smt. Sushila Devi sold her gold amounting to Rs. 66,81,755/- to the Petitioners herein against the



invoices as mentioned under:

S.No.	Date of Sale	Amount Involved (Rs.)
1.	13.09.2019	22,37,620/-
2.	14.09.2019	6,28,320/-
3.	14.09.2019	22,60,415/-
4.	15.09.2019	15,55,400/-

1.3. The Petitioners issued four (4) cheques for a total sum of Rs. 66,81,755/- in favour of the mother of the Respondent herein. In the meanwhile, before the said cheques could be presented for encashment, mother of Respondent expired on 27.10.2019.

1.4. The Respondent thereafter approached the Petitioners on 30.10.2019 and the Petitioner No.1 issued a cheque of Rs. 66,81,755/-, numbered as 000170 dated 02.11.2019 drawn in favour of the Respondent. The said cheque was drawn in favour of the Respondent herein as he is the only Class-I legal heir of late Smt. Sushila Devi.

1.5. The cheque dated 02.11.2019 when presented for encashment was returned unpaid on 02.12.2019 with cheque return memo remarked as 'Fund Insufficient'.

1.6. The Respondent thereafter filed a commercial suit (amended) on 03.06.2023 for recovery of a sum of Rs. 66,81,755/-.

1.7. The Petitioner No.1 filed an application under Order XIII-A of the Code of Civil Procedure, 1908 ('CPC') as amended by the Commercial Courts Act, 2015 ('the Act of 2015') on 09.04.2023, seeking dismissal of the suit filed by the Respondent on the ground that the plaint filed by the Respondent is not in compliance of Order VI Rule 15A CPC and further that



the plaint is not filed in compliance of Section 214 of the Indian Succession Act, 1925 ('the Act of 1925').

1.8. The Commercial Court vide the first impugned order of 25.08.2023 appointed a Local Commissioner under Order XVIII Rule 4 CPC and Order XVA Rule 6(1) CPC. And vide the second impugned order of 25.08.2023, the Commercial Court dismissed the application of the Petitioner filed under Order XIII-A of CPC as amended by the Act of 2015.

2. The learned counsel for the Petitioners states that the Petitioners are aggrieved by the dismissal of their application filed under Order XIII-A CPC as amended by the Act of 2015 by the second impugned order dated 25.08.2023.

2.1. He states that firstly, the suit filed by the Respondent is not maintainable in light of Section 214 of the Act of 1925.

2.2. He states that as per the averments made in the plaint, the amount of Rs. 66,81,755/- was due and payable to late Smt. Sushila Devi and the Respondent has filed the present suit as her sole legal heir. He states in view of these admissions of the Respondent, the Respondent cannot maintain the suit in the absence of the 'Succession Certificate' granted in his favour under Section 214 of the Act of 1925.

2.3. He relies upon the averments made in the replication and the pleading of the Respondent to show that the present suit has been filed for recovery of 'debt' of late Smt. Sushila Devi.

2.4. He states that secondly, the suit cannot be instituted as a commercial suit as the transaction between the parties does not satisfy any of the clauses under Section 2 (1) (c) of the Act of 2015.

2.5. He states that thirdly, the suit has not been verified in strict



compliance of Order VI Rule 15A of the CPC as amended by the Act of 2015, which applies to the Commercial Suit.

2.6. He states with respect to the first impugned order dated 25.08.2023 with respect to the appointment of Local Commissioner, the Petitioner herein is unwilling to bear the costs of the said Local Commission and he challenges the first order to this effect.

3. In reply, learned counsel for the Respondent herein states that late Smt. Sushila Devi had sold her gold to the Petitioners, who had duly issued invoices in her favour acknowledging the payment of debt due to her.

3.1. He states that Petitioners are traders of gold and they had purchased the gold from late Smt. Sushila Devi in course of business.

3.2. He states that initially, Petitioners issued a cheque dated 21.10.2019 in favour of late Smt. Sushila Devi for payment of the said 'debt'; however, after her death, the said cheque was replaced with the cheque dated 02.11.2019 issued in favour of the Respondent herein.

3.3. He states that the Respondent is the sole Class-I legal heir of late Smt. Sushila Devi. He states that the Respondent has placed on record before the Trial Court the 'Surviving Member Certificate' issued by the statutory authority.

3.4. He states that the suit has been filed by the Respondent on the basis of the cheque dated 02.11.2019 issued in favour of the Respondent herein and therefore, the provisions of Section 214 of the Act of 1925 are not attracted.

3.5. He states that the suit has been filed under Section 2(1)(c)(xviii) of the Act of 2015 and therefore, the suit has been correctly filed before the Commercial Court.

3.6. He states that the recording of evidence in the suit is complete and the



matter is listed before the Trial Court on 07.12.2023 for final arguments.

3.7. He states that the amended plaint is duly compliant with the provisions of Order VI Rule 15A CPC as amended by Act of 2015 and the Commercial Court has returned a finding to this effect.

3.8. He states that with respect to the appointment of Local Commissioner, the Local Commissioner's fee stands paid by the Respondent and the same can abide by the final decision of the suit.

4. This Court has considered the submissions of the counsel for the parties and perused the record.

5. The present suit has been filed by the Respondent on account of the dishonour of the cheque dated 02.11.2019 issued in his favour by the Petitioners.

5.1 The cheque is drawn in favour of Respondent *albeit* in consideration of the debt 'due' to his mother i.e., late Smt. Sushila Devi. The Trial Court has rightly referred to Sections 118 and 139 of the Negotiable Instrument Act, 1881. In view of the said provisions, the Petitioners by issuing the cheque in favour of the Respondent have acknowledged their liability to pay the said amount to the Respondent herein. Therefore, the Trial Court has rightly held that the Respondent has filed the present suit in his own right and not in a representative capacity.

5.2 In this regard, it would be relevant to refer to the judgement of a single judge of the High Court of Gujarat in ***Bai Sarda v. Patel, Keshavlal Jotiram, 1967 SCC OnLine Guj 42***, wherein in the similar circumstances, the Court held that the suit filed by the plaintiff therein was maintainable even without a succession certificate. The operative portion of the judgment reads as under:



6. The provisions of this Section prohibit the Court from passing a decree against a debtor of a deceased for payment of his debt to a person claiming on succession to be entitled to the effects of the deceased person. It is clear that the claim contemplated by the section is a claim made by a person in the capacity of and as a legal representative of the deceased creditor. In the present case the suit was based on the specific contract between the parties. It is no doubt true that the initial amount was loaned by the husband of the plaintiff and that was the consideration for executing the pro-note Ex. 26 by the opponent under the Indian Contract Act the consideration may flow from a third party. The execution of pro-note Ex. 26 created a novation between the plaintiff and the defendant and the original contract was substituted by a new one. The petitioner was claiming on the basis of the contract which was executed in her favour, and in her own independent capacity and not as an heir of the deceased creditor. It is evident that in these circumstances no succession certificate is required to be produced before the Court in order to enable it to pass a decree in favour of the plaintiff. According to the trial Court a succession certificate was necessary because the consideration of the pro-note on which the suit was based was the initial amount loaned by the husband of the plaintiff, and that the suit of the plaintiff was to recover the said amount loaned by her husband. The trial Court also held that the pro-note Ex. 26 was only an acknowledgment of the debt by the defendant. The learned trial Judge has failed to notice that the consideration of the contract may flow from a third party. The pro-note Ex. 26 clearly indicates that it is a promissory note and not an acknowledgment. It is also not correct to say that the suit is filed to recover the amount due to the husband of the plaintiff but the suit is filed to recover the amount due on the basis of the specific contract between the plaintiff and the defendant. The provisions of Section 214 of the Indian Succession Act cannot apply to such a case.

7. Next it should also be noted that Section 214 of the Succession Act prohibits the Court from passing a decree unless a succession certificate is produced in the case. In this case, the learned Judge has raised an issue as to whether the plaintiff can Institute a suit without obtaining a succession certificate and ordered that the plaintiff should file the certificate within two months and failing to do so ordered the suit to be dismissed. This order is obviously erroneous and contrary to the express provisions of Section 214 of the Indian Succession Act which only requires the production of succession certificate at any time before the decree is passed.

8. The result is that in view of the fact that the plaintiff has filed the suit in her own capacity as the person in whose favour a pro-note was executed, the order passed by the trial Judge requiring the plaintiff to produce the succession certificate is erroneous. I, therefore, set aside the order requiring the plaintiff to obtain succession certificate and direct that the learned trial judge should dispose the suit according to law.

(Emphasis supplied)



This Court therefore finds no merit in the submission of the Petitioner that the suit is not maintainable in the absence of a 'succession certificate'.

5.3 This Court finds no infirmity with the finding of the Trial Court, which rightly holds that since the suit has been filed on basis of the cheque drawn in favour of the Respondent herein, the suit is *per se* not a suit in representative capacity as legal heir of late Smt. Sushila Devi.

5.4 The Petitioners have not disputed that the Respondent is the sole Class-I, legal heir of late Smt. Sushila Devi and that the Respondent has also placed on record the 'Surviving Member Certificate' issued by the statutory authority in his favour. There is no rival claimant disputing the entitlement of the Respondent to receive this amount.

5.5 In view of this matter as well, this Court finds no merit in the objection raised by the Petitioners.

6. The submission of the Petitioners that the amended plaint does not satisfy the provisions of Order VI Rule 15A CPC as amended by the Act of 2015 cannot warrant any interference by this Court in its supervisory jurisdiction, since the Trial Court has returned a finding that it is satisfied that the plaint complies with the provisions of Order VI Rule 15A CPC as amended by the Act of 2015. The examination of the plaint and its compliance with Order VI Rule 15A falls within the jurisdiction of the Trial Court.

7. The submission of the Petitioners that the suit does not fall within Section 2(1)(c) of the Act of 2015, is a plea which finds no mention in the impugned order. Be that as it may the said issue would necessarily be decided by the Trial Court at the stage of final adjudication while opining on the admissibility of the claim of the Respondent. This Court therefore finds



no ground for interfering with the suit proceedings, which are at the stage of final arguments on this plea raised before this Court.

8. The last submissions made by the Petitioners with respect to the costs of the Local Commissioner's fee does not survive for consideration in view of the statement of the counsel for the Respondent that the costs of the Local Commissioner already stands paid and the recording of evidence stands concluded.

8.1 It is directed that the costs of the Local Commissioner's fee shall abide by the final outcome of the suit

9. In view of the above, this Court finds no merit in this petition and the same is dismissed.

10. Pending application(s) stands disposed of.

MANMEET PRITAM SINGH ARORA, J

DECEMBER 6, 2023/rhc/sk

Click here to check corrigendum, if any