

IA No: GA-Com 1 of 2024
APDT No. 2 of 2024
with
CS No. 70 of 2022
IN THE HIGH COURT AT CALCUTTA
In appeal from its
ORDINARY ORIGINAL CIVIL JURISDICTION
CIVIL APPELLATE JURISDICTION
(Commercial Division)

Sanjay Kumar Agarwal
Versus
Sanjay Kumar Satish Kumar

Before:
The Hon'ble Justice I. P. MUKERJI
And
The Hon'ble Justice BISWAROOP CHOWDHURY
Date: 6th May 2024

Appearance:
Mr. Rupak Ghosh, Advocate
Mr. Pradip Kr. Ghosh, Advocate
Mr. Chandan Mondal, Advocate
Mr. Bidesh Ghosh, Advocate
for the appellant

Mr. K. C. Garg, Advocate
Ms. Sunita Agarwal, Advocate
for the respondent

The Court: We are in a position to dispose of the appeal,
dispensing with all formalities.

This is not a case calling for a summary judgment.

We have gone through the impugned judgment and decree dated 28th August 2023. The narration of facts and evidence in that judgment itself goes to indicate the complication in the transactions between the parties.

We attach particular importance to two documents, one at page 106 and the other at page 209 of the stay petition. Both the statements of account show entries of Sajjan Kumar and Satish Kumar for the period from 1st April 2017 to 5th February 2021.

At page 209, the entries dated 17th June 2017 and 7th July 2017 show that sums of Rs.10,50,000/- and Rs.10,00,000/- were shown as debit entries on the respective dates in the account of the appellant/defendant. Mr. Ghosh submitted that this represented payments by the appellant/defendant to the agent of the respondent, Flozal Estate Private Limited.

Then again the statement of accounts at page 106 of the stay petition show that identical amounts were credited on the same dates in the account of the respondent/plaintiff.

We notice that these transactions which are of paramount importance have not been analysed properly by the learned judge. If the appellant/defendant succeeds in proving the above payments, he would be absolved of his alleged liability. For this solitary reason the case for obtaining summary judgment falls.

This is not the case where the case of the appellant/defendant is non-existing or extremely weak and that the court should have in normal course proceeded to pronounce judgment against him but out of sympathy allows him to contest the suit upon furnishing security.

We are not saying that we have made conclusive scrutiny with regard to the transactions between the parties. They are kept open to stand proof of trial.

We are of the view that the appellant/defendant has more than an arguable or reasonable defence and that should be allowed to defend the suit without security (See *Mechalec Engineers -vs- M/s. Basic Equipment Corporates* reported in A. 1977 SC 577 following *Smt. Kiranmoyee Dassi -vs- Dr. J. Chatterjee* reported in 49 CHN 246).

The impugned judgment and decree dated 28th August 2023 is set aside.

We expedite the trial of the suit. The appellant/defendant has already been permitted to file the written statement by the trial court.

We order cross discovery of documents by 12th June 2024; inspection forthwith.

List the suit for trial on 26th June 2024.

The appeal (APDT 2 of 2024) and the connected application (IA No: GA-Com 1 of 2024) are disposed of accordingly.

(I. P. MUKERJI, J.)

(BISWAROOP CHOWDHURY, J.)

R. Bose