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

+ **CS(OS) 245/2019 & I.As. 6720/2022, 17959/2022, 15291/2023**

HARISH BAJAJ

..... Plaintiff

Through: Mr. Sushil Dutt Salwan, Sr. Advocate
with Mr. Aditya Garg, Advocate.

versus

HDFC BANK & ORS.

..... Defendants

Through: Ms. Gurmeet Bindra, Advocate for
D-1 & 2.
Mr. Anurag Lakhotia & Mr. Udit
Dwivedi, Advocates for D-3 to 6.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

ORDER

20.03.2024

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CS(OS) 245/2019

1. Learned Senior Advocate on behalf of the plaintiff submits that the Written Statement filed on behalf of the defendant Nos. 3 to 5 was permitted to be taken on record *vide* Order dated 16.12.2020, subject to costs of Rs. 1,00,000/- to be paid to the plaintiff within 45 days.
2. Admittedly, the costs had been tendered *vide* Letter dated 20.08.2020 i.e., after more than seven months which was received by the plaintiff on 07.09.2020. Since, the costs had not been tendered within the time given i.e., 45 days, the Written Statement of the defendant Nos. 3 to 5 was not taken on record.
3. Learned counsel appearing on behalf of the defendant Nos. 3 to 6



does not oppose the submissions made on behalf of the plaintiff.

4. It is, therefore, evident that the Written Statement of the defendant Nos. 3 to 5 is not record.

I.A. 3152/2021 (u/S 151 of CPC, 1908)

5. By way of present application, the applicant/plaintiff seeks condonation of 2 days' delay in re-filing the replication.

6. It is submitted that the replication to the Written Statement of the defendant Nos. 1 and 2 was filed, but certain objections were taken by the Registry and to clear the said objections, which led to 2 days' delay in re-filing the replication. Therefore, a prayer is made that the delay of 2 days in re-filing the replication may be condoned.

7. Learned counsel on behalf of the defendant Nos. 1 and 2, on instructions, submits that she has no objection if the present application is allowed.

8. In view of the submissions made on behalf of the learned counsel for the defendant Nos. 1 and 2 as well as the reasons and grounds stated in the present application, the application is allowed and the delay of 2 days in re-filing the replication is hereby condoned. The replication of the plaintiff is taken on record.

9. Accordingly, the present application is disposed of.

I.A. 11909/2022 (u/O VII Rule 11 r/w Section 151 of CPC, 1908)

10. By way of present application, the applicant/defendant No. 5/Manish Bajaj seeks dismissal of the present Suit as the same has become infructuous.

11. It is stated in the application that the plaintiff has filed the present Suit for Declaration, Permanent and Mandatory Injunction. The entire fulcrum of



the present Suit was the overdraft facility provided by the defendant No. 1/HDFC Bank.

12. It is submitted that *vide* Letter dated 29.04.2022, the defendant No. 1/HDFC Bank has already issued a 'No-Dues Certificate' with respect to the said overdraft facility and has stated that the facility stands fully repaid. The copies of the 'No-Dues Certificate' issued by the defendant No. 1/HDFC Bank and other documents have been annexed along with the application. Consequently, nothing survives in the present Suit and the same may be dismissed as infructuous.

13. The applicant/defendant No. 5/Manish Bajaj has placed reliance on the decision in Shipping Corporation of India Ltd. vs. Machado Brothers and Others (2004) 11 SCC 168, wherein it has been that if the subsequent events make the relief claimed infructuous, then the Suit may be dismissed.

14. **The plaintiff *vide* his Reply** has contested the present application by asserting that the defendant Nos. 3 to 5 had committed fraud by forging signatures of the applicant/defendant No. 5/Manish Bajaj on the documents, for removal of Overdraft Limit provided by the defendant No. 1/HDFC Bank to the defendant Nos. 3 to 5. Since, the plaintiff has 25% undivided share in the residential built-up property situated at 47/24, East Patel Nagar, New Delhi in its entirety it could not have been used as a collateral security against the Overdraft Limit extended by the defendant Nos. 3 to 5. Hence, it is asserted that the defendants knowingly with *mala fide* intentions took a false plea and also filed the forged documents to avail the overdraft facility extended/renewed, the defendants cannot now escape from their liability under the garb by filing the present application.

15. It is further submitted that the admission that the overdraft



limit/account has been repaid by the defendants leads to an admission of the plaintiff's case which cannot absolve the defendants of their acts and omissions which are punishable under the law.

16. It is claimed that it is a settled and trite principle of law for the purpose of deciding the application under Order VII Rule 11 of the Code of Civil Procedure, 1908 (*hereinafter referred to as "CPC, 1908"*) and the facts pleaded in the Plaint can be looked into for rejection of the Plaint. The submissions made in the application do not come within the scope of Order VII Rule 11 of CPC, 1908, the Plaint discloses a subsisting cause of action against the defendants. Therefore, it is submitted that the present application is without merit and is liable to be dismissed.

17. **Submissions heard.**

18. At the outset, the objection has been taken on behalf of the plaintiff that Order VII Rule 11 of CPC, 1908 is not attracted since the averments contained in the application are not confined to the facts as narrated in the Plaint.

19. In fact, the applicant/defendant No.5/Manish Bajaj has sought the present Suit to be declared as infructuous in view of the subsequent events. The Apex Court in the case of Shipping Corporation of India Ltd. (*supra*) has observed that if by a subsequent event, the original proceedings become infructuous, *ex debito justitiae*, it would be the duty of the Court to take such action as is necessary in the interest of justice which includes disposing of infructuous litigation. For this purpose, it shall be open for the parties concerned to make an application under Section 151 of CPC, 1908 to bring to the notice of the Court the relevant facts and circumstances when such application is made, the Court shall enquire into the alleged facts and



circumstances to ascertain whether the pending litigation has become infructuous.

20. In light of the aforesaid judgment, the objection taken by the plaintiff that this application is not tenable under Order VII Rule 11 of CPC, 1908 is correct, but from the title of the present application itself, it is evident that it has also been filed under Section 151 of CPC, 1908 for declaring the pending Suit as infructuous on account of the subsequent events. Therefore, the present application is taken as under Section 151 of CPC, 1908. An enquiry into the alleged facts and circumstances is required to be made to find out whether the suit has become infructuous.

21. The plaintiff in his Suit for Declaration, Permanent and Mandatory Injunction has sought the following reliefs: -

“a. A decree declaring the renewal/extension of the Over Draft Facility extended by the defendant Bank to the defendant Company, after 2015, to be null and void as the renewal/extension is based on fraud and forged documents;

b. A decree for permanent injunction, restraining the defendants 3 to 5, their agents, assigns, attorneys, servants or legal representatives, from mortgaging, creating any charge, lien or third party right on the residential plot bearing no. 47/24, East Patel Nagar, Near Kalindi College/ New Delhi - 8 alongwith the built up structure thereon, or any part thereof, in any manner, including using it as a collateral security against any advances/loans/over draft or other facility;

c. An order for permanent injunction, restraining the defendant no. 1 Bank, its officers, agents, assigns, attorneys, servants or legal representatives, from retaining residential plot bearing no. 47/24, East Patel Nagar, Near Kalindi College, New Delhi - 8 alongwith the built up structure thereon, or any part thereof, as a collateral security against any advances/loans/over draft or other facility;



d. An order for the costs of the suit to be awarded to the Plaintiff.”

22. The first relief was for declaring the renewal/extension of overdraft facility extended after 2015 as null and void being based on the fraud and forged documents. Essentially, the assertions of the plaintiff were that he ceased to be the Director of defendant No. 3/Silver Rose Overseas Pvt. Ltd. despite which, by forging his signatures on the documents, the defendant No. 4/Manoj Bajaj and the defendant No. 5/ Manish Bajaj availed the overdraft facility from the defendant No. 1/HDFC Bank.

23. It had not been denied or challenged that the ‘No-Dues Certificate’ in respect of the overdraft facility has been issued by the defendant No. 1/HDFC Bank *qua* the overdraft facility and the said facility stands fully repaid. Thus, the first relief in respect of the Declaration of the renewal/extension of overdraft has become infructuous.

24. The submissions made on behalf of the plaintiff is that the Court must still return a finding about the documents submitted for availing the overdraft facility, bearing forged signatures of the plaintiff, is not tenable for the simple reason that this is a Civil Suit for adjudication of civil liabilities. However, if the plaintiff feels that there is any criminal act of forgery committed by any of the defendants, he has a remedy under the criminal law and nothing in this regard survives in the present Suit.

25. For the same reason, the Relief (c) for restraining the defendant No. 1/HDFC Bank from retaining the suit property as part of collateral security against the advance/loan/overdraft facility has also become infructuous.

26. Insofar as the Relief (b) is concerned, wherein an injunction has been sought against the defendant Nos. 3 to 5 from using the property as a



collateral security against any advances/loans/overdraft or other facility concerned, the applicant/defendant No. 5/Manish Bajaj has submitted that the Suit for Partition arraying all the family members, including the plaintiff, his parents, brothers and sisters has already been filed *vide* CS(OS) 853/2023 which is pending adjudication in this Court. It is further submitted that the suit property is part of the subject matter of the CS(OS) 853/2023 and the protections of the suit property can be sought in that Partition Suit.

27. However, as conceded by the learned counsels for the parties, they are restrained from creating any third-party rights or using it as a collateral security for overdraft facility in the suit property, subject to any Orders that may be made in CS(OS) 853/2023 or any other Suit.

28. In light of the above observations, nothing more survives in Relief Nos. 1 and 3 of the Suit which are hereby dismissed as infructuous. The Suit in respect of Relief No. 2 is disposed of in the aforesaid terms.

29. The Decree Sheet be prepared, accordingly.

NEENA BANSAL KRISHNA, J

MARCH 20, 2024

S.Sharma