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

+ **RSA 151/2024**

SORAJ

.....Appellant

Through: Mr.Satyendra Kumar Singh,
Mr.Manish, Mr.Ankush, Ms.Jyoti
Thakur and Ms.Trapta Kushwaha,
Advocates.

versus

TINA BANSAL & ANR.

.....Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE PURUSHAINDR KUMAR KAURAV

ORDER
29.10.2024

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1. Heard learned counsel appearing on behalf of the appellant/plaintiff on the question of admission.
2. The instant appeal has been filed by the appellant/plaintiff against the impugned judgment and decree dated 07.05.2024, passed by the District Judge, Shahdara, Karkardooma Court, Delhi, dismissing the appeal preferred against the judgement and decree dated 30.09.2022, whereby the suit for mandatory and permanent injunction was dismissed.
3. Learned counsel for the appellant/plaintiff submits that in the instant case, the Courts below have erred in relying upon the decision passed by this Court in the case of *Vasu Tech Ltd. vs. Ratna Commercial Enterprises Ltd.*



& *Anr*¹. According to him, the facts in the instant case are evidently distinguishable from the aforementioned precedent for the reason that the appellant/plaintiff has instituted the civil suit prior to the action being initiated by the respondent/defendant, whereas in *Vasu Tech Ltd*, the defendant therein had initiated proceeding earlier to plaintiff instituting a suit.

4. I have considered the aforesaid submissions and also perused the record.

5. The suit was filed by the appellant/plaintiff seeking reliefs of permanent and mandatory injunction. In the said suit, a direction was sought against respondent/ defendant to hand over the original signed documents and three signed cheques to the appellant/plaintiff which were kept by defendant/respondent and to restrain them from using the same.

6. In *Vasu Tech Ltd.*, the Court held that granting relief that prevents a defendant from initiating civil or criminal proceedings against a plaintiff is impermissible, as it would hamper access to justice. In that case, the plaintiff had sought to restrain the defendant from presenting 16 cheques issued in its favour. The Court, while relying on the decision of the Supreme Court in *Cotton Corpn. of India Ltd. v. United Industrial Bank Ltd.*², emphasized that Sections 41(b) and (d) of the Specific Relief Act, 1963, prohibits granting of any injunction that restrains a person from pursuing legal action to enforce or protect a legally recognized right. The relevant paragraphs of the decision in *Vasu Tech Ltd* are reproduced herein:-

¹ 2008 SCC OnLine Del 524

² (1983) 4 SCC 625



“13. The prayer (a) in the plaint, when examined in the light of Sections 41(b) and 41(d) of the Act bears out the contention of the Counsel for the defendant that the relief, as sought in the said prayer, cannot be granted in favour of the plaintiff as the same will amount to restraining the defendant from instituting civil or criminal proceedings against the plaintiff, which would amount to hampering access to justice. In the case of Cotton Corporation of India Ltd. (supra), while dealing with the provisions of Sections 41(b) and 41(d) of the Act, the Supreme Court observed as below:

“8. It is, therefore, necessary to unravel the underlying intendment of the provision contained in Section 41(b). It must at once be conceded that Section 41 deals with perpetual injunction and it may as well be conceded that it has nothing to do with interim or temporary injunction which as provided by Section 37 are dealt with by the CPC. To begin with, it can be said without fear of contradiction that anyone having a right that is a legally protected interest complains of its infringement and seeks relief through Court must have an unhindered, uninterrupted access to law Courts. The expression ‘Court’ here is used in its widest amplitude comprehending every Forum where relief can be obtained in accordance with law. Access to justice must not be hampered even at the hands of judiciary. Power to grant injunction vests in the Court unless the Legislature confers specifically such power on some other Forum. Now access to Court in search of justice according to law is the right of a person who complains of infringement of his legally protected interest and a fortiori therefore, no other Court can by its action impede access to justice. This principle is deducible from the Constitution which seeks to set up a society governed by rule of law. As a corollary, it must yield to another principle that the superior Court can injunct a person by restraining him from instituting or prosecuting a proceeding before a subordinate Court. Save this specific carving out of the area where access to justice may be impeded by an injunction of the Court, the Legislature desired that the Courts ordinarily should not impede access to justice through Court. This appears to us to be the equitable principle underlying Section 41(b). Accordingly, it must receive such interpretation as would advance the intendment, and thwart the mischief it was enacted to suppress, and to keep the path of access to justice through Court unobstructed.”

14. In the present case, any attempt to prohibit the defendants from presenting 16 cheques issued by the plaintiff in favour of the defendant, shall amount to placing fetters on a legal right of the defendant No. 1 to



approach the Court of law for seeking relief on account of non-encashment of the cheques. The provisions of Section 41 of the Act prohibit such a relief being granted which restrains any person from instituting or prosecuting any proceedings in a Court of law for infringement of his legally protected interests. Thus, the defendants are justified in saying that the first relief as sought by the plaintiff in prayer (a) of the plaint is barred by law, being directly hit by the provisions of Sections 41(b) and 41(d) of the Act. The inevitable conclusion is that the said relief cannot be granted to the plaintiff. It is also relevant to note that the application filed by the defendants under Order 7 Rule 11 of the CPC insofar as the prayer for rejection of the plaint in respect of prayer (a) is concerned, was not seriously opposed by the plaintiff, more so in the light of subsequent events which have been narrated above, as a result of which an ex parte ad interim injunction granted in favour of the plaintiff was vacated by the Division Bench pursuant to which the cheques in question issued by the plaintiff were presented by the defendant for encashment.”

7. If the nature of the relief prayed in the civil suit and the decision of this Court in **Vasu Tech Ltd.** are carefully perused, the same would clearly indicate that the nature of the injunction sought is barred in light of the aforementioned provisions. Such a relief, as sought by the appellant/plaintiff, amounts to an attempt to restrict the respondent/defendant from using original signed documents and cheques by the appellant/ plaintiff and places fetters on the legal right of the respondent/defendant in approaching the Court of law for seeking relief. The same position has also been observed by the Courts below.

8. The first Appellate Court made following pertinent observations:-

*“The present appeal has been filed by the appellant challenging the impugned order dated 30.09.2022 passed by Ld. Civil Judge-02, Shahdara, KKD Court, Delhi whereby the plaint was rejected under Order 7 Rule 11 (a) and (d) CPC on the grounds that the reliefs sought by the plaintiff in the Prayer Clause (a) and (b) of the instant suit seeking mandatory and permanent injunction against the defendants/respondents thereby directing the defendants to hand over and preventing them from using, original signed documents and 03 signed cheques of the plaintiff, are ex-facie not-maintainable in view of judgments titled as of “**Vasu Tech Ltd. vs. Ratna Commercial***



Enterprises Limited", AIR 2008 Delhi 122 passed by Hon'ble High Court of Delhi and another judgment titled as "Capt. Atul Kumar Singh vs. Ms, Jalveen Rosha", AIR 2000 Del 38, passed by Hon'ble High Court of Delhi, where it has been observed that any attempt to prohibit the defendants from presenting the cheques issued by the plaintiff in favour of the defendant shall amount to placing fetters on the legal right of the defendant to approach the Court of law for seeking relief on account of non-encashment of the cheques and the same is barred by law under the provisions of section 41 (b) and (d) of Specific Relief Act, 1963.

Even other wise and without prejudice to the above, it is admitted fact that the respondents/defendants have already filed Civil Suit in respect of one of the cheques issued by the appellant/plaintiff in favor of respondent no.1, which has already been decreed against the appellant/plaintiff by Ld, Predecessor Court vide order and decree dated 01.11.2022 and even the application under Order 37 Rule 4 CPC filed on behalf of appellant/plaintiff herein (defendant in the said civil suit bearing no. 31/22 titled as "Tina Bansal vs. Soraj") for setting aside the said order and decree dated 01.11.2022 has also been dismissed by this Court vide order of even date in another connected matter between the parties bearing Misc DJ No.760/22.

Ld. Counsel for the respondents have also submitted that respondents have no other cheques or documents in their possession, as alleged by the appellant except one cheque bearing no, 338849 in respect of which the above proceedings have already been initiated by the respondent no.1 again the appellant as mentioned above.

Accordingly, I find no error or illegality in. the impugned order dated 30.09.2022 passed by Ld. Civil Judge-02, Shahdara, KKD Court, Delhi in Suit No. 40/22 and in view of the above stated discussion, no ground is made out for allowing, the present appeal.

Hence, present appeal stands dismissed being not maintainable."

9. With respect to the contention of the learned counsel for appellant/plaintiff that the decision passed by this Court in **Vasu Tech Ltd** is distinguishable from the controversy herein on the ground that the proceedings were instituted by the defendant therein prior plaintiff initiated any legal action, the same would not cause any tangible difference in the settled legal position and thus, this contention deserves no merit.



10. Therefore, no substantial question of law has arisen and the instant appeal stands dismissed.

PURUSHAINDRA KUMAR KAURAV, J

OCTOBER 29, 2024

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