IN THE HIGH COURT AT CALCUTTA
(Ordinary Original Civil Jurisdiction)
ORIGINAL SIDE

Present:

The Hon'ble Justice Krishna Rao

G.A. No. 2 of 2023

With

G.A. No. 3 of 2023

In

C.S. No. 176 of 2022

Sulochana Poddar

Versus

Kamlesh Agarwal

Mr. Rajarshi Dutta
Mr. Sarbojit Mukherjee
Mr. A.P. Agarwalla

… For the plaintiff.

Mr. Debdut Mukherjee
Mr. Nikunj Berlia
Mr. Varun Kothari
Ms. Urvashi Jain
Mr. Akash Dutta
Mr. Mosarat Reyaz
Mr. Sandip Manna

… For the defendant.

Hearing Concluded On : 12.12.2024

Judgment on : 15.01.2025

Krishna Rao, J.:

1. The plaintiff has filed the suit praying for a decree of sum of Rs. 60,02,146/- along with interest. The plaintiff has filed an application being G.A. No. 2 of 2023 under Chapter XIIIA of the Original Side Rules of this Court for summary judgement.

2. The defendant has filed an application being G.A. No. 3 of 2023 for rejection of plaint and dismissal of the suit.

3. As per the case of the plaintiff, the defendant requested the plaintiff for a short term loan of Rs. 40,00,000/- for the purpose of his business and agreed to refund the said amount within 92 days with interest at the rate of 15% per annum. As per request of the defendant, the plaintiff has paid the said amount to the defendant by way of RTGS on 11th July, 2018. The defendant has confirmed the receipt of the said amount by a letter dated 11th July, 2018. In the confirmation letter, the defendant has also forwarded two postdated cheques of Rs. 40,00,000/- and Rs. 1,51,233/-. The plaintiff has encashed the amount of Rs. 1,51,233/- being the interest for 92 days but the defendant has requested for extension of the loan amount of Rs. 40,00,000/- and the same was extended from time to time and the cheque of Rs.40,00,000/- was returned to the defendant. The defendant had paid interest of Rs. 49,315/- and Rs. 1,47,945/- on 28th December, 2018 and 16th February, 2019 respectively.

4. The defendant has issued a cheque of Rs. 40,00,000/- dated 1st April, 2020 in favour of the plaintiff but on presentation of the said cheque, the same was returned to the plaintiff with the endorsement "Drawer Signature Differs". After dishonour of the said cheque, the plaintiff has sent a notice to the defendant through email calling upon the defendant for repayment of loan along with interest but the defendant has neither sent any reply nor has paid any amount to the plaintiff.

5. Learned Counsel for the plaintiff submits that Writ of summons was duly served upon the defendant on 29th July, 2022 through bailiff and the defendant entered appearance in the suit on 3rd August, 2022. Learned Counsel for the defendant had never informed the plaintiff with regard to appearance of the defendant in the suit and only on receipt of the report from the office on 3rd January, 2023, the plaintiff came to know that the defendant had entered appearance in the suit but till the filing of the present application, the defendant has not filed written statement.

6. Learned Counsel representing the plaintiff submits that immediately when the plaintiff came to know that the defendant entered appearance, the plaintiff has filed the present application under Chapter XIIIA of the Original Side Rules of this Court for summary judgment.

7. Learned Counsel for the plaintiff submits that the defendant has no defence to defend the suit and the plaintiff is entitled to get summary judgment and decree of amount as claimed by the plaintiff.

8. As per the case of the defendant, the defendant is one of the Director of the firm namely, "Skipper Furnishing Private Limited" and the plaintiff has approached the defendant to invest an amount of Rs. 1,00,00,000/- in the said business in order to derive financial gain. Upon negotiation between the parties, it was agreed that the plaintiff would immediately pay a sum of Rs. 40,00,000/- as an advance amount to the defendant as loan for 92 days with simple interest at the rate of 15% per annum.

9. It is the further case of the defendant that the defendant has issued two postdated cheques to the plaintiff for the principal amount and interest but on realization of the interest amount, the plaintiff will make further amount of Rs. 60,00,000/- and the plaintiff will return the cheque of the principal amount of Rs. 40,00,000/-. It is further submitted that the investment of Rs. 1,00,00,000/- by the plaintiff in the business of the defendant is for a period of ten years and thereafter the plaintiff would be entitled to seek refund of the said amount.

10. Learned Counsel for the defendant submits that to secure the investment amount of Rs.1,00,00,000/- the defendant would issue an undated cheque to the plaintiff. The defendant would make bi-monthly payments to the plaintiff towards returns on the investment amount of

Rs. 1,00,00,000/- proportionate to the profits made from the investments made by the plaintiff.

11. He submits that though the plaintiff has withdrawn the interest on completion of 92 days but failed to pay the further amount of Rs. 60,00,000/- to the defendant. He submits that as the plaintiff failed to pay the balance amount of Rs. 60,00,000/- which led to the defendant substantial loss and damages.

12. Learned Counsel for the defendant submits that the plaintiff paid Rs. 40,00,000/- for 92 days and as per the case of the plaintiff, the time period for return of the said amount was extended from time to time but there is no pleading in the plaint which specified the extended tenure of the alleged loan.

13. He submits that it is alleged that after dishonor of the cheque, the plaintiff has sent notice through email but in the notice, the email address of the defendant is not correct. He submits that as per the case of the plaintiff that after receipt of notice, the defendant has not paid the amount along with interest as such the plaintiff has filed the suit but the notice itself was not served upon the defendant, thus no cause of action arose for filing of the suit.

14. Heard the Learned Counsel for the respective parties, perused the applications and the documents relied by the parties. It is admitted that the plaintiff has paid an amount of Rs. 40,00,000/- to the defendant and the defendant has also paid interest of the said amount till 16th February, 2019. The defendant has not returned the amount of Rs. 40,00,000/- along with interest from 1st April, 2019, on the ground that the said amount is not the loan amount, the said amount was of advance amount out of total amount of Rs. 1,00,00,000/- which the plaintiff agreed to invest in the business of the defendant for a period of ten years. The defendant also resist the application of the plaintiff on the pretext that the suit filed by the plaintiff does not disclose cause of action as the notice sent by the plaintiff to the defendant by email is not correct and the said notice was never served upon the defendant.

15. The defendant has further contended that the suit filed by the plaintiff is commercial in nature but the plaintiff has filed the suit before the Non-Commercial Division.

16. The plaintiff paid the amount of Rs. 40,00,000/- to the defendant for a period 92 days with interest at the rate of 15% per annum which the defendant has confirmed in the communication dated 11th July, 2018. From the said communication of the defendant, it is also admitted that the defendant has issued two cheques i.e. one for the principal amount of Rs. 40,00,000/- and another for interest of Rs. 1,51,233/- for 92 days. In paragraph 2 of the plaint, the plaintiff has mentioned that for the business, the defendant has requested for short term loan of Rs. 40,00,000/- but other than the said statement, there is no mercantile document to establish that the transaction between the plaintiff and the defendant is connected with any commercial business. The communication dated 11th July, 2018, is only the acknowledgement from the defendant that the defendant has received the amount of Rs. 40,00,000/- as loan for 92 days with interest at the rate of 15% per annum. The document cannot be said to be the mercantile document. The document dated 11th July, 2018, categorically reveals that the amount paid by the plaintiff to the defendant as loan. Thus this Court did not find any substance on the submissions of the Learned Advocate for the defendant that the transaction between the plaintiff and the defendant is commercial in nature and is covered under Section 2(1)(c)(i) of the Commercial Courts Act, 2015.

17. The contention of the defendant is that the suit filed by the plaintiff does not contain cause of action. On his submissions, the defendant has relied upon the statement of the plaintiff that the plaintiff has sent notice to the defendant by email calling upon the defendant for refund of the principal amount of Rs. 40,00,000/- along with interest but the defendant has neither sent any reply nor has made payment to the plaintiff. The defendant has drawn the attention of this Court to the email addresses of the defendant in which the plaintiff has sent notice to the defendant is not correct. The email in which the plaintiff has sent notice to the defendant is kamalesh@skipperfurnishings.com but the correct email address of the defendant is kamlesh@skipperfurnishing.com. The email in which the plaintiff has sent a notice the first word is "kamalesh" but in the correct email address, the first word is "kamlesh". After the alphabet "m" alphabet "a" is added wherein in the correct email after the alphabet "m" alphabet "a" is not there. The email address is not correct thus the defendant has not received the notice. Mere service of notice upon the defendant is not effected cannot be said that no cause of action arose. Cause of action is a bundle of fact. To ascertain the cause of action, the plaint is to be read as a whole.

18. The loan amount of Rs. 40,00,000/- for a period of 92 days. The defendant has paid interest for 92 days to the tune of Rs. 1,51,233/-. The defendant has not returned the amount of Rs. 40,00,000/- to the plaintiff but the defendant had paid last interest till 16th February, 2019. Thereafter, the defendant has not paid any interest. The defendant after taking back the earlier cheque no. 101556 dated 11th October, 2018 and issued a fresh cheque no. 000052 dated 1st April, 2020 for Rs. 40,00,000/-. On presentation of the said cheque, the same was returned to the plaintiff on 20th June, 2020 with the endorsement "Drawer Signature Differs". It is not the case of the defendant that the defendant has not issued cheque to the plaintiff. The defence raised by the defendant that the plaintiff failed to pay the balance amount of Rs. 60,00,000/- as investment in the business of the defendant but the there is no evidence that there is any agreement between the plaintiff and the defendant that the plaintiff will invest an amount of Rs. 1,00,00,000/- but only paid Rs. 40,00,000/-.

19. As per the case made out by the defendant, the plaintiff agreed to invest Rs. 1,00,00,000/- but in the acknowledgement dated 11th July, 2018 or any date thereafter, the defendant has not requested the plaintiff for making further amount of Rs. 60,00,000/- but on the other hand, the defendant has paid interest on Rs. 40,00,000/- till 16th February, 2019 and issued cheque of Rs. 40,00,000/- to the plaintiff and subsequently the same is dishonoured.

20. In the case of ***A.B.C. Laminart (P) Ltd. vs. A.P. Agencies, Salem*** reported in ***(1989) 2 SCC 163*** wherein the Hon'ble Court held that:

> ***"12.*** *A cause of action means every fact, which if traversed, it would be necessary for the plaintiff to prove in order to support his right to a judgment of the court. In other words, it is a bundle of facts which taken with the law applicable to them gives the plaintiff a right to relief against the defendant. It must include some act done by the defendant since in the absence of such an act no cause of action can possibly accrue. It is not limited to the actual infringement of the right sued on but includes all the material facts on which it is founded. It does not comprise evidence necessary to prove such facts, but every fact necessary for the plaintiff to prove to enable him to obtain a decree. Everything which if not proved would give the defendant a right to immediate judgment must be part of the cause of action. But it has no relation whatever to the defence which may be set up by the defendant nor does it depend upon the character of the relief prayed for by the plaintiff."*

21. In the present case, if the plaint read as a whole, it is categorically reveals that sufficient cause of action is explained since the payment of amount of Rs. 40,00,000/- till the dishonour of the cheque issued by the plaintiff. In para 9 of the plaint, the plaintiff has stated that notice was duly received by the defendant but the defendant has neither paid the amount nor has sent any reply but has not stated that the cause of action arose with respect to the said notice.

22. Considering the above, this Court finds that the defence raised by the defendant is sham and moon shine. The plaintiff is entitled to get summary judgment and decree.

23. The plaintiff may get decree for a sum of Rs.40,00,000/- along with interest at the rate of 15% per annum from 1st April, 2019 till realization of the decretal amount.

24. In view of the above, **G.A. No. 2 of 2023** is allowed. **G.A. No. 3 of 2023** is **dismissed**.

25. **C.S. No. 176 of 2022** is **disposed of**. Decree be drawn accordingly.

(Krishna Rao, J.)