Vashishta Gakhar Vs Sanjay Chawla

C.S. (OS) No. 1200/2013 and I.A. No. 10898/2014

Court: Delhi High Court

Date of Decision: Sept. 8, 2014

Acts Referred:
Civil Procedure Code, 1908 (CPC) â€" Order 37 Rule 3(4), Order 37 Rule 37#Evidence Act, 1872 â€" Section 91#Negotiable Instruments Act, 1881 (NI) â€" Section 138, 142

Hon'ble Judges: Manmohan Singh, J

Bench: Single Bench

Advocate: Uma Aggarwal and Pulkit Aggarwal, Advocates for the Appellant; Sunil Lalwani, Advocates for the Respondent

Judgement

@JUDGMENTTAG-ORDER

Manmohan Singh, J.
This is a suit for recovery under Order XXXVII CPC filed by the plaintiff against the defendant.

2. Brief facts of the case are that in the month of July, 2010, defendant had approached the plaintiff for a loan of Rs. 15,00,000/- for six months.

The plaintiff provided to the defendant the sum of Rs. 7,00,000/- and Rs. 8,00,000/- against promissory notes and receipts dated 1st July, 2010

and 7th July, 2010 respectively. The defendant is the joint owner of land measuring 1 Bigha 17 Biswas in Khasra Nos. 31/18/3 and 19/1, situated

in Tikari Kalan, Delhi (hereinafter referred to as the ""suit property"") and with the consent of other joint owners has deposited the original

documents of title/rights of the suit property i.e. sale deed dated 24th February, 1981 and Khasra Girdawari with the plaintiff as security till the

clearance of loan of Rs. 15,00,000/- raised against the suit property.

3. The case of the plaintiff is that after several demands by the plaintiff, the defendant in discharge of his debts, two cheques, one bearing No.

813627 for a sum of Rs. 7,00,000/-, another bearing No. 813628 for a sum of Rs. 8,00,000/- both dated 1st May, 2012, drawn on the South

Indian Bank Limited, Punjabi Bagh, New Delhi-110026, were issued in favour of the plaintiff. Both the above said cheques were presented by the

plaintiff in Punjab National Bank, New Rajinder Nagar, New Delhi-110060 for encashment and crediting the said amount to his account on 1st

May, 2012 but the same were returned unpaid by the said bank along with the memos dated 1st May, 2012 due to the reason ""Funds Insufficient"".

4. It is stated in the plaint that the plaintiff informed the defendant regarding dishonour of the cheques but no response was given by the defendant

and hence, a legal demand notice dated 16th May, 2012 was issued by the plaintiff demanding the payment of the amount of the said cheques i.e.

Rs. 15,00,000/- along with interest due thereon @ 18% per annum from the date of promissory notes executed by the defendant in favour of the

plaintiff besides Rs. 7,500/- towards the cost of legal notice within 15 days from the date of receipt of the said notice.

5. It is stated that inspite of service of legal notice dated 16th May, 2012, the defendant failed to make payment of the said amount as demanded

therein within the period of 15 days of the date of service of the said notice. The plaintiff had filed a complaint under Section 138 read with Section

142 of the Negotiable Instruments Act, 1881 against the defendant and the same is pending before the District Courts.

6. The plaintiff has prayed for a decree of recovery of Rs. 22,90,722/- against the defendant along with the future interest @ 18% per annum from

the date of filing of the suit till its realization. The details of the same are given as under:

7. The matter was placed before this Court by the learned Joint Registrar and the suit was registered under Order XXXVII CPC. The defendant

was served with the summons under Order XXXVII CPC to enter appearance on 19th November, 2013. However an application being I.A. No.

19440/2013 for appearance was filed by the defendant and hence an application being I.A. No. 21185/2012 under Order XXXVII Rule 3(4)

CPC was filed by the plaintiff for issuance of summons for judgment to the defendant which was withdrawn with the liberty to file fresh application

being I.A. No. 701/2013. The defendant was served with summons for judgment on 10th February, 2014. In response thereto the defendant has

sought leave to defend in an application being I.A. No. 10898/2014 raising the following grounds of triable issues:--

(i) It is stated in the application that the plaintiff had good relations in various banks and on that basis the defendant requested the plaintiff to

arrange a loan of Rs. 20 lacs from any government bank. The plaintiff demanded commission of 5% of the total loan sanctioned by bank to which

the defendant agreed. The defendant, as security to the said friendly loan, had deposited with the plaintiff the original documents of the suit

property.

(ii) The plaintiff told the defendant that the banks are willing to give loan of Rs. 15 lacs only to him; and he can get the loan from the bank in his

own name; which he will give to the defendant; and the defendant instead of paying interest to the bank will have to pay the interest to the plaintiff.

The plaintiff obtained the signatures of the defendant on some blank papers on which the revenue stamps were affixed as being requirement of the

bank.

(iii) The plaintiff has never given any amount of Rs. 15 lacs as loan to the defendant. The plaintiff is not a moneylender and does not have any

license to give loan to anyone as required under the law. The plaintiff has committed an act of fraud by misusing the cheques as well as the blank

signed papers and documents of the suit property.

8. Section 91 of the Indian Evidence Act, 1982 inter alia stipulates that where the terms of a contract, or of a grant, or of any other disposition of

property have been reduced to a form of document, no evidence shall be given in proof of the terms of such contract etc. except the document

itself.

9. In the present case, the plaintiff has filed the following original documents:--

(i) Original cheque bearing No. 813627

(ii) Original cheque bearing No. 813628

(iii) Original cheque returning memos dated 1st May, 2012

(iv) Original promissory note and receipt dated 1st July, 2012

(v) Original promissory note and receipt dated 7th July, 2012

(vi) Original letter dated 7th July, 2010 of defendant to the plaintiff

(vii) True copy of the notice dated 16th May, 2012

(viii) Original postal receipts

(ix) Returned envelope sent through registered post with A.D. Card (x) True copy of letter sent to post office dated 1st June, 2012

(xi) Original service report from the post office dated 26th June, 2012.

10. The defendant has not denied his signatures of the said original documents filed by the plaintiff.

11. The defendant in his own letter has acknowledged the amount of Rs. 15,00,000/- recovered from the plaintiff. The extract of the said letter is

reproduced here under:--

From:

Sanjay Chawla

Resident of 9/19,

Old Rajinder Nagar,

New Delhi-110060,

To

Shri Vashishta Gakhar,

Son of Late Mr. G.D. Gakhar,

Resident of 8A/10,

Old Rajinder Nagar,

New Delhi

Re: Mortgage of Property

I, the above mentioned joint owner of above said property, by virtue of revenue record of village Tikri Kalan, Delhi in the name of my father Late

Mr. C.S. Chawla, voluntarily and with the consent of other joint owners, deposit the original documents of title/rights to land property measuring

one Bigha Seventeen Biswas in Khasra Nos. 31/18/3 and 19/1, situated in Tikri Kalan, Delhi bounded as per descriptions given below, with you

as security till the clearance of loan of Rs. 15,00,000/- raised against above said property.

North: Land

South Main Rohtak Road

East Rasta and Peoe

West Land

The Original documents have been handed over to you are not the subject matter of any prior deal, mortgage, lien or any kind of encumbrance

whatsoever.

The amount of loan acknowledged through two separate receipts of Rs. 8,00,000/- (Rs. Eight Lakhs only) dated 07.07.2010 and Rs. 7,00,000/-

(Rs. Seven Lakhs only) dated 01.07.2010.

Thanking you,

Yours Truly

Sd/-

Sanjay Chawla

Dated: 07.07.2010

12. Therefore, in view of the above, it is clear that all the grounds raised by the defendant are moonshine, false and frivolous. The defendant as per

its own conduct is not entitled for leave to defend. The application under these circumstances is dismissed.

13. In the absence of defence, the suit is liable to be decreed. The plaintiff is entitled to a decree of Rs. 22,90,722/- (Rupees Twenty Two Lacs

Ninety Thousand Seven Hundred Twenty Two only) as claimed in the plaint. Consequently, a decree of Rs. 22,90,722/- (Rupees Twenty Two

Lacs Ninety Thousand Seven Hundred Twenty Two only) as prayed in the plaint along with 10% interest from the date of filing of the suit till the

realization of the amount be passed in favour of the plaintiff and against the defendant.

14. Suit stands disposed of. Decree be drawn accordingly.