

(2009) 12 DEL CK 0221

Delhi High Court

Case No: I.A. 10672 of 2009 in C.S. (OS) 923 of 2008

Shri Vivek Gupta

APPELLANT

Vs

Shri Vikram Dev Malhotra and
Another

RESPONDENT

Date of Decision: Dec. 4, 2009

Acts Referred:

- Negotiable Instruments Act, 1881 (NI) - Section 138

Hon'ble Judges: S.N. Dhingra, J

Bench: Single Bench

Advocate: Sanat Kumar and Poonam Gulia, for the Appellant; Joginder Sukhija and Ajay Jain, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

Shiv Narayan Dhingra, J.

plaintiff filed this suit under Order 37 of CPC for a sum of Rs. 31,75,000/- stating therein that plaintiff advanced a sum of Rs. 25 lac to defendants No. 1 and 2. Rs. 20 lac was given by way of account payee cheques drawn on State Bank of India dated 21st September 2006 and 23rd September 2006 and Rs. 5 lac was given cash. The cheques were drawn in favour of a firm M/s Tini Craft and defendants No. 1 and 2 being the partners of the firm M/s Tini Crafts were jointly and severally liable to pay back the amount. Defendants issued a cheque dated 30th November 2006 drawn on ICICI Bank for a sum of Rs. 25 lac towards the dues of plaintiff and assured plaintiff that they will pay interest by way of separate cheque next month. The cheque of Rs. 25 lac was duly presented by plaintiff to its banker for encashment. However, the cheque got dishonoured twice due to insufficiency of funds. plaintiff thereafter filed a complaint u/s 138 of Negotiable Instruments Act. After filing of complaint, defendant No. 1 issued a cheque of Rs. 10 lac to the plaintiff assuring that the

cheque was towards part payment and shall be honoured. This cheque was also dishonoured by the bank of defendants as the defendants stopped payment. plaintiff filed another complaint case u/s 138 of the Negotiable Instruments Act against defendant No. 1 who had issued the cheque. plaintiff filed the present suit for recovery of the due amount. plaintiff has placed on record the copy of dishonoured cheque of Rs. 25 lac with a copy of cheque returning memo as well as a copy of dishonoured cheque of Rs. 10 lac. plaintiff also served a legal notice on defendants seeking return of Rs. 25 lac along with interest @ 18% per annum. plaintiff has placed on record the statement of account maintained by it in respect of defendant No. 3 M/s Tini Craft, Goa which shows that Rs. 25 lac was paid to defendant M/s Tini Craft.

2. By way of present application for leave to defend, defendants have not disputed taking of a loan from plaintiff and took a stand that the loan was not advanced to defendant No. 1 but was advanced to defendant No. 3 M/s Tini Craft and defendant No. 1 was not a partner of defendant No. 3. The other stand taken is that the plaintiff had settled all their disputes with defendants and against a loan of Rs. 25 lac, plaintiff had agreed to accept only Rs. 10 lac as full and final settlement. However, plaintiff was to withdraw all legal proceedings against defendants and a cheque of Rs. 10 lac was issued by defendant No. 1 in terms of this settlement. However, this cheque was to be encashed by plaintiff after withdrawal of all legal proceedings. The plaintiff did not withdraw the legal proceedings, therefore, payment of cheque was stopped.

3. Another defence taken is that in discharge of the loan a sum of Rs. 14 lac was repaid in cash without obtaining any receipt and hence the loan was discharged.

4. During arguments, the counsel for defendants submitted that this Court had no territorial jurisdiction since all the defendants were residents of Goa. The other argument is that the defendant No. 3 was a proprietorship firm and defendant No. 1 was not a partner.

5. In my view, the different stands taken by defendants in the leave to defend application are merely moonshine. The cheque of Rs. 25 lac issued by defendants after taking loan from plaintiff has the names of both the defendants No. 1 and 2 printed over it and if the firm M/s Tinni Craft had been a proprietorship firm, the cheque would not have had the names of two defendants i.e. defendants No. 1 and 2 printed over it. This only shows that account of M/s Tinni Craft was being managed by both the defendants No. 1 and 2 and they were joint proprietors of M/s Tinni Craft. Even otherwise, defendants have not placed on record constitution of M/s Tinni Craft to show that M/s Tinni Craft was a proprietorship firm. It is defendant No. 1 who admittedly issued another cheque of Rs. 10 lac, towards discharge of the loan which also got dishonoured. I, therefore, consider that plea of defendant No. 1 that he was not concerned with M/s Tinni Craft is baseless.

6. The arguments on the issue of territorial jurisdiction also does not hold ground. A perusal of plaint would show that the loan was advanced in Delhi and the cause of action arose in Delhi.
7. The plea of settlement having been arrived at with the plaintiff of discharge of entire loan liability by accepting Rs. 10 lac, is belied by the other averments made in the leave to defend application wherein it is stated by defendants that they had paid back Rs. 14 lac in cash without mentioning the dates and amounts when this Rs. 14 lac was paid back. I, therefore, consider that this plea is also not tenable.
8. The defence raised by defendants in the leave to defend application are false and sham defence and a totally moonshine and the defendants are not entitled to leave to defend and the plaintiff on the other hand is entitled for a decree. The application of defendants for leave to defend is hereby dismissed.
9. plaintiff has claimed interest @ 18% per annum over the principal amount of Rs. 25 lac. I consider that since there was no agreement of interest between the parties, the plaintiff is entitled to only to a reasonable rate of interest. Considering the present scenario of rate of interest, interest @ 8% per annum would be a reasonable rate of interest.
10. I, therefore, allow the suit filed by plaintiff. The suit is hereby decreed for a sum of Rs. 25 lac as principal amount and interest @ 8% per annum on the principal amount from the date of loan till filing of the suit and interest @ 8% per annum on the amount so accrued upto the date of filing suit would be payable till realization. Decree sheet be drawn accordingly.