
(2012) 02 DEL CK 0466

Delhi High Court

Case No: CS (OS) 111 of 2008

Ms. Rohini Damji
Sidpra

APPELLANT

Vs

Sh. Som Prakash
Yadav

RESPONDENT

Date of Decision: Feb. 28, 2012

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 12 Rule 8
- Negotiable Instruments Act, 1881 (NI) - Section 138

Hon'ble Judges: G.S. Sistani, J

Bench: Single Bench

Advocate: S.K. Bhaduri, for the Appellant;

Judgement

G.S. Sistani, J.

Plaintiff has filed the present suit against the defendant for recovery of Rs.

22,10,000/-together with interest @18%, per annum from the date of filing of the present suit till realization. Upon service of summons, defendant entered appearance and also filed written statement. Since, none appeared on behalf of the defendant on 13.1.2009, the defendant was proceeded ex parte on 13.1.2009. Liberty was granted to the plaintiff to file ex parte evidence and the matter was placed before Joint Registrar for marking exhibits on documents. Plaintiff has filed her ex parte evidence by way of affidavit, which is Exhibited as Ex.PW-1/A. In the affidavit, the plaintiff has deposed on the lines of the plaint.

2. In the affidavit, the plaintiff has deposed that in January, 1976, she was allotted an Industrial Shed bearing No. 185 in Okhla Industrial Area, Phase-1, New Delhi, by Delhi State Industrial Development (DSIDC). In February, 2007, the defendant desired his intention to purchase the Industrial Shed of the plaintiff bearing no.185. At that time the defendant represented to the plaintiff that he had already purchased another Shed

bearing no.154, DSIDC, Okhla Industrial Area, Phase-I, New Delhi, of Sh. S.K. Dey. Believing the averments made by the defendant, plaintiff agreed to sell her shed to the defendant. During this time, the plaintiff also received various offers from other persons to purchase her Shed. She has further deposed that in the month of March, 2007, the defendant backed out from the agreement arrived at with her on account of some financial crisis and due to certain problems, which cropped up with respect to Shed No. 154. Since the defendant backed out from the agreement arrived at with the plaintiff, the plaintiff requested the defendant to pay compensation to her. The defendant in order to avoid payment of compensation to the plaintiff had represented the plaintiff that a relative of the defendant, namely, Sh. Naresh Yadav, who was running the business under the name and style of Shivam Infocom Private Limited, is interested in purchasing the said Shed of the plaintiff. The defendant introduced Sh.Naresh Yadav to the plaintiff. Sh.Naresh Yadav had agreed to purchase Shed NO.185 of the plaintiff and even paid some part payment to the plaintiff in March, 2007, to June, 2007. During the process of negotiation of sale with the defendant, the defendant became friendly with the plaintiff and gained confidence of the plaintiff. In April, 2007, the defendant requested the plaintiff to give a friendly loan of Rs. 20.00 lakhs to him on the ground that owners of Shed Nos.85 and 54 are selling some portion of their shed at lesser prices and he wanted to purchase the same. The defendant also requested the plaintiff that she may request Shivam Infocom Private Limited to pay the said amount of Rs. 20.00 lakhs to the defendant which may be adjusted from the sale proceedings in respect of her said Shed. The defendant promised to repay the said loan of Rs. 20.00 lakhs to the plaintiff within a short span of time. Believing the representation of the defendant the plaintiff agreed to pay Rs. 20.00 lakhs to the defendant as a friendly loan with the understanding that defendant would clear the said loan within a short period. The plaintiff has also deposed that thereafter the plaintiff requested Shivam Infocom Private Limited vide communication dated 1.4.2007 to pay a sum of Rs. 20.00 lakhs to the defendant out of the sale proceedings in respect of the said Shed. The communication dated 1.4.2007 has been exhibited as Ex.PW-1/1. At the request of the plaintiff, Shivam Infocom Private Limited paid the defendant Rs. 20.00 lakhs. Defendant issued a duly signed receipt dated 4.4.2007 acknowledging to have received Rs. 14.00 lakhs, which amount has been adjusted by Sh.Naresh Yadav, owner of Shivam Infocom, out of the sale proceeds of the plaintiff's shed NO.185. Receipt issued by defendant dated 4.4.2007 has been exhibited as Ex.PW-1/2. The plaintiff again requested Sh.Naresh Yadav to pay a further sum of Rs. 6.00 lakhs to the defendant vide communication dated 1.6.2007, which has been exhibited as Ex.PW-1/3. Pursuant to the said request of the plaintiff, Sh.Naresh Yadav paid a further sum of Rs. 3.00 lakhs to the defendant, which amount was duly acknowledged by the defendant vide receipt dated 1.6.2007, which has been exhibited as Ex.PW-1/4. Thereafter Shivam Infocom Private Limited had also paid a sum of Rs. 2.00 lakhs to the defendant, vide receipt dated 7.6.2007, which is duly signed by the defendant. Receipt dated 7.6.2007 has been exhibited as Ex.PW-1/5. Thereafter again Shivam Infocom Private Limited has paid another sum of Rs. 1.00 lakh to the defendant, which was duly received by the defendant vide receipt dated 15.6.2007, which has been exhibited as Ex.PW-1/6. Thus, the

defendant in total had received a sum of Rs. 20.00 lakhs. The defendant initially, in order to gain confidence of the plaintiff and for repayment of the part of the loan amount, issued four cheques in the sum of Rs. 2.50 lakhs, each, to the plaintiff. The cheques issued by defendant to the plaintiff have been exhibited as Ex.PW-1/7 to Ex.PW-1/10. The defendant also promised to give a further cheque of Rs. 10.00 lakhs to the plaintiff, as the defendant had acknowledged and admitted to have received Rs. 20.00 lakhs from the plaintiff. Thereafter the defendant had not made any payment to the plaintiff. Upon presentation, all the four cheques of Rs. 2.50 lakhs, each, issued by defendant to plaintiff returned with the remark "funds insufficient". Copy of the cheque returning memo has been exhibited as Ex.PW-1/11. The plaintiff thereafter served a legal notice dated 17.10.2007 upon the respondent, however, despite the legal notice the defendant did not repay the amount of Rs. 20.00 lakhs to the plaintiff. Copy of the legal notice dated 17.10.2007 has been exhibited as Ex.PW-1/12. Original Postal Receipt, evidencing service of legal notice dated 17.10.2007, has been exhibited as Ex.PW-1/12. Since the defendant has not paid any amount to the plaintiff, the plaintiff filed a complaint case against the defendant u/s 138 of Negotiable Instruments Act, which is pending adjudication.

3. In the affidavit, the plaintiff has also deposed that in order to defraud her the defendant was trying to sell his another Shed No. 154 and was also trying to create third party right in respect of the said Shed as well as half portion of the said Sheds No. 85 and 44, DSIDC, Okhla Industrial Estate, Part-I, New Delhi. Copy of the Agreement to Sell dated 17.6.2006, in respect of Shed No. 154, in respect of the defendant, has been exhibited as Ex.PW-1/14. The plaintiff thereafter issued a notice dated 12.3.2009 under Order XII Rule 8 CPC to the defendant to produce the Original Agreement to Sell dated 17.6.2006. Notice dated 12.3.2009 has been exhibited as Ex.PW-1/15. Original Postal Receipt, evidencing service of legal notice dated 12.3.2009, has been exhibited as Ex.PW-1/6. I have heard counsel for the plaintiff, perused the plaint, the documents and the evidence led by the plaintiff, which has gone un-rebutted. Having regard to the documents placed on record, the suit is decreed in favour of the plaintiff and against the defendant in the sum of Rs. 22,10,000/-together with costs, pendente lite and future interest @ 8% from the date of decree till realization. Decree-sheet be drawn up accordingly.