IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 08.05.2024

\+ **RFA(OS)(COMM) 39/2019 and CM No.42836/2019**

ANIL SHARMA AND ORS. ..... Appellants

versus

GENESIS FINANCE CO. LTD. AND ORS. ..... Respondents

Advocates who appeared in this case:

For the Appellants : Ms Malvika Trivedi, Senior Advocate with Mr Sidharth Tyagi, Advocate.
For the Respondents : Mr Rajat Navet and Mr Kushagra Pandit, Advocates.

CORAM
HON'BLE MR JUSTICE VIBHU BAKHRU
HON'BLE MS JUSTICE TARA VITASTA GANJU

JUDGMENT

VIBHU BAKHRU, J

1. The appellants have filed the present intra court appeal impugning an order and decree dated 27.03.2019 (hereafter *the impugned order*) passed by the learned Single Judge in CS(COMM) 307/2016 captioned *Genesis Finance Company Ltd. v. Anil Sharma & Others.*

2. By the impugned order, the learned Single Judge had allowed the application filed by respondent no.1 (plaintiff in the suit – hereafter also referred as *plaintiff*) under Order XIIIA of the Code of Civil Procedure,

1908 (hereafter *the CPC*) and had issued a Preliminary Decree in terms of Order XXXIV Rule 4 of the CPC holding that the plaintiff was entitled to recover jointly and severally from the appellants and respondent nos. 2 and 3 (defendants in the suit), the principal amount of ₹2,03,00,000/- along with interest at the rate of 24% per annum from the date of the Settlement Deed dated 20.01.2014 (hereafter *the Settlement Agreement*) till the date of institution of the suit, that is 31.03.2016, and at the rate of 18% per annum from the date of institution of the suit till its realization. Additionally, the learned Single Judge had also decreed costs quantified at ₹2.5 lacs. The learned Single Judge had granted the appellants and respondent nos. 2 and 3 six months' time to pay the amount due to the plaintiff failing which, the plaintiff would be entitled to apply for a final decree for the sale of the mortgaged properties or a part thereof, for recovery of the amounts due.

3. The plaintiff had filed the aforementioned suit seeking a decree for the sale of mortgaged properties as mentioned in Paragraph 4 of the plaint for the recovery of a sum of ₹4,15,14,023.76/- (Rupees Four crores Fifteen lakhs Fourteen thousand Twenty-Three and Seventy-Six paise only) along with *pendente lite* and future interest at the rate of 36% per annum (reducing).

4. The learned Single Judge had noted that it was an admitted case that the parties had entered into the Settlement Agreement, whereby the appellants had agreed that the outstanding loan of ₹2,03,00,000/- would be paid along with interest at the rate of 36% per annum (computed on

reducing balance method) in terms of the schedule annexed to the Settlement Agreement. The Settlement Agreement was also furnished in the mediation proceedings before the Mediation Centre, Dwarka Courts on 24.01.2014. The mediation proceedings were concluded on the basis of the Settlement Agreement and therefore, the appellants are bound by the same. Notwithstanding the express terms of the Settlement Agreement, the learned Single Judge has reduced the rate of interest to 24% per annum.

5. The appellants have founded their defence on the basis that they were deceived into entering into a Loan Agreement dated 19.05.2011 (hereafter *the Loan Agreement*) with the plaintiff under the belief that the loan carried a simple interest at the rate of 17.67% per annum. However, the documentation was drawn up on the basis that the loan was on interest at the rate of 17.67% (flat), which worked out to be approximately 30.08% on a reducing balance method.

6. The learned Single Judge found that there was no possibility of the appellants succeeding in the said defence. The said conclusion was premised on the basis that the payment schedule forming a part of the Loan Agreement was admitted by the appellants. And, there was no dispute that the parties had entered into the Settlement Agreement whereby, the parties had settled the dispute regarding the outstanding liability and interest payable thereon. There is also no dispute that the loan availed by the appellants was secured by an equitable mortgage or title deeds in respect of three properties.

7. Before addressing the dispute sought to be raised by the appellants, it would be relevant to refer to the facts, which are not disputed.

7.1 In May 2011, appellant nos.1 to 3 approached the plaintiff (a Non-Banking Finance Company) for seeking a loan of ₹2,75,00,000/- (Rupees Two crores Seventy-Five lakhs only) as they were in urgent need of funds.

7.2 It is admitted that appellant nos.1 to 3 and the plaintiff executed the Loan Agreement for availing a loan for a sum of ₹2,75,00,000/- (hereafter also referred to as *the loan*) at the rate of 17.67% per annum against the security of the following properties:

(i) Freehold ownership right in the DDA built SFS, CAT(III) Flat No.9-A, Pocket-B, Ground Floor, Alaknanda-B, New Delhi now known as Gangotri Enclave, Alaknanda, New Delhi-110019;

(ii) Flat No.85-T, Third Floor, Sector-8, DDA SFS Flats (CAT. II) situated at Jasola, New Delhi-110025; and

(iii) Space no.4 in Lower Ground Floor, (Basement Floor) of the Property No.E-5 built on a plot of land measuring 273 square yards situated at Main Road, Kalkaji, New Delhi-110019.

7.3 Additionally, the loan was also to be secured by personal guarantees. The loan was to be repaid in 36 monthly instalments of ₹11,68,735/- payable on or before the 30th of every month. The Loan Agreement was also signed by appellant no.4 (Puja Sharma).

7.4 Respondent no.2, M/s Connoisseur Buildtech Pvt. Ltd. (defendant no.4 in the suit) through its Directors being appellant no. 3 (Arun Sharma) and appellant no. 4 (Puja Sharma) and one Mr Pawan Malhotra (defendant no.6 in the suit) executed separate Agreements of Guarantee each dated 19.05.2011.

7.5 Admittedly, appellant nos.1 to 3 handed over the documents pertaining to the aforementioned properties to the plaintiff for securing the loan. The General Powers of Attorney were also executed by appellant nos.1 to 3 in favour of the plaintiff.

7.6 It is also admitted that the plaintiff disbursed the loan of ₹2,75,00,000/- by issuing various cheques, all dated 23.05.2011. Appellant nos.1 to 3 also acknowledged the receipt of the said amount. Appellant nos.1 to 3, had also issued 36 post dated cheques for amounts equal to the EMIs (Equated Monthly Instalments). However, the appellants claim that the same were issued as a security for repayment of the instalments and the loan.

7.7 Admittedly, some of the cheques issued by the appellants for the payment of EMIs were duly encashed. However, intermittently, certain cheques were dishonoured. Appellant nos. 1 to 3 made payments on account of the cheques that were dishonoured prior to May 2013, through banking channels. However, after May 2013, cheques issued by the appellants against EMIs were dishonoured and no payments were made against these cheques.

7.8 The plaintiff initiated complaints under Section 138 of the Negotiable Instruments Act, 1881 (hereafter *the NI Act*) in respect of the cheques that were dishonoured in the District Court, Saket, New Delhi. In addition, the plaintiff also filed complaints under Section 138 of the NI Act in the District Court of Dwarka, Delhi in respect of certain other cheques that were presented and dishonoured.

7.9 Admittedly, in proceedings relating to Section 138 of the NI Act, which were pending in the District Court, Dwarka, Delhi in January 2014, the parties were referred to mediation for arriving at a settlement. The appellants on one part and the plaintiff on the other part entered into the Settlement Agreement, which recorded the terms of the settlement between the parties. Appellant nos.1 to 3 acknowledged that they owed a sum of ₹2,03,00,000/- as on the date against the outstanding principal loan and the interest. It was agreed that the appellant would make a payment of ₹1,75,00,000/- (Rupees One crore Seventy-Five lakhs) on or before 25.01.2014 and the balance amount along with interest at the rate of 36% per annum on reducing balance method in 24 monthly instalments of ₹1,65,335/- from February, 2014 till January, 2016.

7.10 On the basis of the Settlement Agreement, the mediation proceedings were successfully concluded in the Mediation Centre, Dwarka Courts, Delhi.

7.11 The plaintiff also agreed to withdraw its complaint case (CC No.1/2014) before the Court on 25.01.2016 on realisation of the

settlement amount. The plaintiff also agreed to withdraw four other cases on receipt of a sum of ₹1,75,00,000/-. The appellants also handed over certain post-dated cheques in respect of the amounts payable under the Settlement Agreement. The cheque of ₹1,75,00,000/- issued to the plaintiff pursuant to the settlement, was dishonoured on presentation.

7.12 In the aforesaid context, the plaintiff filed the suit for recovery of the amounts due from the appellants.

8. The appellants and respondent no. 2 (defendant nos. 1 to 5 in the suit) filed a joint written statement to contest the aforementioned suit [CS(COMM) 307/2016] raising various objections including that (i) the suit was not in accordance with the provisions of Order XXXIV of the CPC; (ii) the suit is not for an adjudicated sum of money; (iii) suit for sale of the mortgaged properties is pre-mature; (iv) the jurisdiction of the Court is barred by the provisions of Recovery of Debts Due to Banks and Financial Institutions Act, 1993; (v) the plaintiff had not filed a proper Statement of Account to show the actual and alleged outstanding amount against the appellants; (vi) the suit is liable to be rejected under Order VII Rule 11 of the CPC; (vii) the amount claimed by the plaintiff is not legally recoverable; and (viii) Mr Vinod Dayal, who had instituted the suit on behalf of the plaintiff is not its authorised representative.

9. The appellants claimed that they were compelled by the plaintiff to sign on printed forms of some agreements and on blank papers and were not provided with the copies of the same. They alleged that said documents are being misused for victimising the appellants by charging

such rate of interest that was not agreed. As noted above, according to the appellants, the loan carried a simple interest at the rate of 17.67% per annum but the plaintiff had compounded the same. The appellants alleged that the documents produced by the plaintiff were procured by misrepresentation and the General Powers of Attorney dated 19.05.2011 were obtained under duress. Additionally, they claim that 36 cheques were issued as a security and not against EMIs.

THE IMPUGNED ORDER

10. The learned Single Judge considered the aforesaid defence and concluded that the appellants had no real prospect of successfully defending the suit. As is apparent from the above, although several defences were raised but most of them are without any basis. The principal defence urged on behalf of the appellants was that the learned Single Judge did not have the jurisdiction to entertain the suit in view of the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (now known as Recovery of Debts and Bankruptcy Act, 1993) and under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereafter *the SARFAESI Act*).

11. The learned Single Judge found that the plaintiff was not entitled to institute proceedings before the learned Debts Recovery Tribunal and therefore, the suit was not barred by the provisions of the Recovery of Debts and Bankruptcy Act, 1993. The learned Single Judge also found that there was no real prospect of the appellants succeeding in their

defence that they had signed blank papers or were misled into signing the loan documents. The defence that the appellants had not signed the documents voluntarily was clearly insubstantial. The learned Single Judge noted that the case set up by the plaintiff was entirely on documents, which were admitted including the Settlement Agreement, whereby the appellants had acknowledged that the principal amount of ₹2,03,00,000/- was outstanding.

THE CONTENTION ADVANCED ON BEHALF OF THE DEFENDANTS (APPELLANTS IN THE PRESENT APPEAL)

12. The learned counsel for the appellants submitted that the appellants had repaid a sum of ₹2,61,98,620/- against a loan of ₹2,75,00,000/-, which was equal to 22.4 EMIs against a mistaken belief that the equated monthly instalment for repayment of the loan facility was ₹11,68,735/-. He contended that the plaintiff had with *malafide* intentions, persuaded appellant nos. 1 to 3 to agree to pay interest at the rate of 17.67% but the EMIs were based on 30.08% rate of interest per annum. He submitted that if the EMIs were calculated at 17.67% per annum; the equated monthly instalment would be ₹9,89,644/-. He submitted that the Settlement Agreement was signed by the appellants when the mother of appellant nos. 1 and 3 was admitted to the ICU. The appellants had executed the Settlement Agreement mistakenly by trusting the plaintiff and had admitted that the amount outstanding as on 20.01.2014 was ₹2,03,00,000/-. He stated that the Settlement Agreement was also made a part of proceedings before the Mediation Centre, Dwarka Courts on 24.01.2014. He submitted that since, the

Court had not adjudicated the amount payable by the appellants, the suit under Order XXXIV Rule 4 of the CPC was not maintainable. He also contended that the plaintiff had compelled the appellants to sign on the dotted line taking advantage of their urgent requirement of funds. He submitted that the Settlement Agreement was not binding as it was signed at the time when the appellants were seriously disturbed and were not in a normal state of mind as the mother of appellant nos.1 and 3 was seriously ill and admitted to ICU on account of multi-organ failure. The plaintiff had taken the benefit of a grim situation and had not shown the entire Settlement Agreement to the appellants. He also contended that the plaintiff had concealed that it would levy an interest at the rate of 36% per annum and the concerned appellants had not signed the Settlement Agreement voluntarily.

13. Mr Rajat Navet, learned counsel appearing for the plaintiff had countered the aforesaid submissions.

14. We find no infirmity with the impugned order allowing the plaintiff's application under Order XIIIA of the CPC as applicable to commercial disputes. All material facts necessary for decreeing the suit are admitted. It is not disputed that the loan of ₹2,75,00,000/- was disbursed to defendant nos.1 to 3 (appellant nos. 1 to 3). The concerned defendants had signed the Loan Agreement agreeing to repay the loan in 36 monthly instalments. The equated monthly instalment was fixed at ₹11,68,735/-. Thus, there could be no misunderstanding as to the interest payable. The loan was to be repaid in three years (36 months)

and the rate of interest applied was 17.67% on the loan amount of ₹2,75,00,000/-. The EMIs of ₹11,68,735/- for 36 (Thirty-Six) months translates to repayment of the loan of ₹2,75,00,000/- with 17.67% flat rate of interest. It is common knowledge that in computing a flat rate of interest, credit is not provided for the component of principal amount in the equated monthly instalment. Thus, the amounts repaid are not taken into account for computing the interest. The interest is calculated for the entire term of the loan. Thus, in the present case, the total interest payable by the appellant would be 53.01% being 17.67% per annum for a period of three years. The said interest would be payable on the entire loan amount of ₹2,75,00,000/- and the appellants would repay a total amount of ₹4,20,74,460/-. The appellants could be under no misconception of the method of calculating the interest, as the schedule of repayment was annexed to the loan documents which indicated that the above aggregate amount was payable.

15. It is also admitted that the appellants had paid the EMIs due till May, 2013. Although some of the EMIs payable prior to the May, 2013 were delayed, but were eventually paid. Thus, the appellants had performed their repayment obligations in part and had paid almost 22 EMIs, not taking into account the interest on delayed payments of the EMIs paid prior to May, 2013.

16. Since the cheques issued by the appellants were dishonoured, the plaintiff had instituted complaints under Section 138 of the NI Act, which were pending in the Courts at Dwarka. Thus, at that stage, there

could be no question of the appellants not being unaware of the terms of the Loan Agreement. The appellants had thereafter entered into the Settlement Agreement, which was also placed in the mediation proceedings, which had commenced pursuant to the Court referring to parties to mediation.

17. Clearly, at that stage, the appellants were fully aware of the claim made by the plaintiff. The contention that the appellants were not in a proper frame of mind as the mother of appellant nos.1 and 3 was in ICU at the material time is clearly an afterthought. No such plea was taken in the written statement filed by the appellants. The contention that the appellants were not shown the entire Settlement Agreement, is also insubstantial. Further, no such averment has been made in the written statement filed by the defendants. As noted above, the execution of the Settlement Agreement is not disputed.

18. In the aforesaid circumstances, it is not possible for this Court to accept that the appellants had real prospect of succeeding in their defence. Undeniably, the rate of interest being charged by the plaintiff is very high. The learned counsel appearing for the plaintiff had submitted that the rate at which the plaintiff borrows funds from the market is also high and is commensurate with the rates being charged at the material time.

19. We also note that notwithstanding that the Settlement Agreement is unambiguous and provides for payment of interest at the rate of 36% per annum on reducing balance basis; the learned Single Judge had

reduced the pre-suit interest to 24% per annum. Although, there is no discussion in the impugned order for reducing the rate of interest from 36% per annum to 24% per annum, but the plaintiff has accepted the same. Thus, we find no reason to delve into this aspect.

20. In view of the above, we find no merit in the present appeal. The same is, accordingly, dismissed. The pending application is also disposed of.

VIBHU BAKHRU, J

TARA VITASTA GANJU, J

MAY 08, 2024
RK