

\$~Suppl.-51

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ RFA (OS) (COMM) 10/2020

BRIJESH KUMAR AGARWAL & ORS.Appellants

Through: Mr.Sanjeev Sagar with Ms.Nazia
Parveen, Advocates.

Versus

IFCI FACTORS LIMITED & ANR.Respondents

Through: Mr.Anupam Srivastava,
Advocate.

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Date of Decision: 11th February, 2021

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MS. JUSTICE ASHA MENON

J U D G M E N T

MANMOHAN, J (Oral):

C.M.No.14565/2020

1. On 09th July, 2020, the learned Predecessor Division Bench had admitted the present appeal and directed it to be listed in due course. With regard to the present stay application, learned counsel for respondent no.1 had stated that he shall not institute or prosecute any application seeking execution of the impugned judgment till the disposal of the present application.

2. Today, learned counsel for appellant states that the learned Single Judge without framing any issues and permitting admission

denial of documents and also without allowing parties to lead evidence had passed the impugned decree and that too without any application being filed under Order XIII A CPC. He submits that steps under order XVA CPC regarding case management hearing have to be mandatorily followed, which have not been followed by the learned Single Judge. He submits that in a similar case, a decree had been set aside by the Division Bench of this Court in *Clues Network Pvt. Ltd. Vs. L'oreal; 2019 SCC Online Del 7984*, wherein it was held that a civil suit, in particular, a commercial suit had to proceed strictly in accordance with the procedure outlined in the Code of Civil Procedure, 1908 (CPC) read with the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 (Commercial Courts Act, 2015). The relevant portion of the judgment relied upon by the learned counsel for appellant is reproduced hereinbelow:

“20. xxx.....

- (i) *Whether the learned Single Judge could have, merely on the basis that counsel for both parties agreed to the 'final disposal of the suit', dispensed with the further stages of framing of issues and recording of evidence as mandated by the CPC as further modified by the Commercial Courts Act, 2015 (CCA)?*

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36. Consequently, question (i) has to be answered in the negative. It is held that could not have, merely on the basis that counsel for both parties agreed to the 'final disposal of the suit', dispensed

with the further stages of framing of issues and recording of evidence as mandated by the CPC as further modified by the Commercial Courts Act, 2015 (CCA).

3. He also relies upon the judgment of the Supreme Court in *Associate Builders vs. Delhi Development Authority; (2015) 3 SCC 49*, wherein it has been held that a perverse decision going to the root of the matter constitutes a patent illegality as well as a public policy violation. The relevant portion of the said judgment relied upon by learned counsel for the appellants is reproduced hereinbelow:-

“31.The third juristic principle is that a decision which is perverse or so irrational that no reasonable person would have arrived at the same is important and requires some degree of explanation. It is settled law that where:

- (i) a finding is based on no evidence, or*
- (ii) an arbitral tribunal takes into account something irrelevant to the decision which it arrives at; or*
- (iii) ignores vital evidence in arriving at its decision, such decision would necessarily be perverse.”*

4. *Per contra*, learned counsel for respondents submits that in the present case, the written statement had been filed by the appellants without enclosing an affidavit of admission/denial of the documents. Therefore, according to him, the written statement filed by the appellants/defendant nos.2 to 5 was not in accord with Chapter VII, Rule 4 of the Delhi High Court (Original Side) Rules, 2018 and the said written statement filed by the appellants should be deemed not to be on record and the documents filed by the respondents/plaintiffs should be deemed to be admitted. In support of his submission, he

relies upon the judgment of a learned Single Judge of this Court in ***Unilin Beheer B.V. vs. Balaji Action Buildwell, 2019 SCC OnLine Del. 8498***, wherein it has been held as under:-

“31. I thus hold, that in the event of the written statement being filed without affidavit of admission/denial of documents, not only shall the written statement be not taken on record but the documents filed by the plaintiff shall also be deemed to be admitted and on the basis of which admission the Court shall be entitled to proceed under Order VIII Rule 10 of the CPC.”

5. He also refers to the impugned order to contend that the appellants/defendant nos.2 to 5 had vehemently urged the learned Single Judge to summarily dismiss the plaint filed by the respondents and, that too, without framing of issues and without filing an application under Order XIII A CPC.

6. Learned counsel for respondent no.1/plaintiff further contends that having succeeded in the Court below, the respondents should not be deprived of the fruits of the decree merely because defeated party has invoked the jurisdiction of the Superior Court. In support of his submission, he relies upon a judgment of the Supreme Court in ***Atma Ram Properties (P) Ltd. vs. Federal Motors Pvt. Ltd. (2005) 1 SCC 705***, wherein it has been held as under:-

“9.....The power to grant stay is discretionary and flows from the jurisdiction conferred on an appellate Court which is equitable in nature. To secure an order of stay merely by preferring an appeal is not the statutory right conferred on the appellant. So also, an appellate Court is not ordained to grant an order of stay merely because an appeal has been preferred and an application for an order of stay has been made. Therefore, an applicant for order of

stay must do equity for seeking equity. Depending on the facts and circumstances of a given case an appellate Court, while passing an order of stay, may put the parties on such terms the enforcement whereof would satisfy the demand for justice of the party found successful at the end of the appeal. In our opinion, while granting an order of stay under Order 41 Rule 5 of the CPC, the appellate court does have jurisdiction to put the party seeking stay order on such terms as would reasonably compensate the party successful at the end of the appeal insofar as those proceedings are concerned. Thus, for example, though a decree for payment of money is not ordinarily stayed by the appellate Court, yet, if it exercises its jurisdiction to grant stay in an exceptional case it may direct the appellant to make payment of the decretal amount with interest as a condition precedent to the grant of stay, though the decree under appeal does not make provision for payment of interest by the judgment-debtor to the decree-holder."

7. Learned counsel for the respondents also refers to Chapter XA of Delhi High Court (Original Side) Rules to submit that at the time of Case Management hearing, a Court may of its own, decide a claim pertaining to any dispute, by a summary judgment, without recording oral evidence. He submits that the said provision had not been considered by the Division Bench while passing the judgment in ***Clues Network Pvt. Ltd*** (supra).

8. In rejoinder, learned counsel for the appellants states that since in the present appeal, the appellants have shown sufficient cause and *prima facie* case, the impugned decree should be stayed in its entirety.

9. Having heard learned counsel for the parties, this Court, in view of the order dated 09th July, 2020 passed by the learned predecessor Division Bench, directs that the present appeal which has

already been admitted, be listed according to its seniority in the ‘Regular Matters’.

10. Consequently, this Court at the present stage has only to make an interim arrangement.

11. Order XLI CPC gives power and jurisdiction to the Appellate Court to pass interim orders. The relevant portion of Order XLI CPC is reproduced hereinbelow:-

Order XLI CPC

“1. Form of appeal - What to accompany memorandum.....

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[(3) Where the appeal is against a decree for payment of money, the appellant shall, within such time as the Appellate Court may allow, deposit the amount disputed in the appeal or furnish such security in respect thereof as the Court may think fit.]

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5. Stay by Appellate Court

(1) An appeal shall not operate as a stay of proceedings under a decree or order appealed from except so far as the Appellate Court may order, nor shall execution of a decree be stayed by reason only of an appeal having been preferred from the decree; but the Appellate Court may for sufficient cause order stay of execution of such decree.....

(3) No order for stay of execution shall be made under sub-rule (1) or sub-rule (2) unless the Court making it is satisfied—

(a) that substantial loss may result to the party applying for stay of execution unless the order is made;

(b) that the application has been made without unreasonable delay; and

(c) that security has been given by the applicant for the due performance of such decree or order as may ultimately be binding upon him.

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[(5) Notwithstanding anything contained in the foregoing sub-rules, where the appellant fails to make the deposit or furnish the security specified in sub-rule (3) of rule 1, the Court shall not make an order staying the execution of the decree.]”

12. A Division Bench of this Court in ***Praveen Davar and Ors. Vs. Harvansh Kumari and Ors; 2008 SCC Online Del 821*** has held that the Appellate Court can put the appellant on such reasonable terms as would in the opinion of the Court reasonably compensate the decree holder for loss occasioned by delay in execution of the decree by the grant of a stay order.

13. The Supreme Court in ***M/s Malwa Strips Pvt. Ltd. Vs. Jyoti Ltd; (2009) 2 SCC 426*** has held that in money decree, normally there shall be no stay till the decretal amount is deposited or security is given for the said amount. It has been also held that an exceptional case has to be made for stay of execution of a money decree. It has been further held that for a stay to be granted, cogent and adequate reasons must be given. The relevant portion of the said judgment is reproduced hereinbelow:-

“12.But while granting stay of the execution of the decree, it must take into consideration the facts and circumstances of the case before it. It is not to act arbitrarily either way. If a stay is

granted, sufficient cause must be shown, which means that the materials on record were required to be perused and reasons are to be assigned. Such reasons should be cogent and adequate.”

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14.An exceptional case has to be made out for stay of execution of a money decree. The Parliamentary intent should have been given effect to. The High Court has not said that any exceptional case has been made out. It did not arrive at the conclusion that it would cause undue hardship to the respondent if the ordinary rule to direct payment of the decretal amount or a part of it and/or directly through the judgment debtor to secure the payment of the decretal amount is granted. A strong case should be made out for passing an order of stay of execution of the decree in its entirety.”

14. This Court is also of the *prima facie* view that the learned Single Judge has power and jurisdiction under Chapter XA of the Delhi High Court (Original Side) Rules, 2018 to pass a summary judgment without recording oral evidence. Unfortunately, the said Rule was not brought to the notice of the Division Bench while passing the judgment in ***Clues Network Pvt. Ltd*** (supra). Consequently, the said judgement offers no assistance to the appellants at this stage.

15. Further, upon a perusal of the impugned order, we find that the learned Single Judge has held that the appellants/defendant nos.2 to 5 in their written statement had not disputed that the defendant no.1/respondent no.2 company had raised the invoices, the amount whereof was claimed by the respondent no.1/plaintiff in the suit, and further that defendant no.1/respondent no.2 company had assigned the receivable under the said invoices in favour of respondent no.1/plaintiff

under the Factoring Agreement, which had been guaranteed by the appellants/defendant nos.2 to 5.

16. This Court is also of the *prima facie* opinion that since the appellants' written statement was not accompanied by admission/denial of the documents, it should not have been looked into by the learned Single Judge in view of the judgment in *Unilin Beheer B.V. vs. Balaji Action Buildwell* (supra) and Chapter VII, Rule 4 of the Delhi High Court (Original Side) Rules, 2018.

17. Keeping in view the aforesaid, this Court is of the view that no cogent and adequate reason is made out for grant of unconditional stay of the execution proceedings.

18. Consequently, this Court directs the appellants to deposit the principal decreed amount i.e. Rs.4,78,37,930.22/- with the Registry of this Court within six weeks from today. Upon deposit, the amount shall be kept in a fixed deposit by the registry of this Court. In case the amount is deposited, there shall be stay of execution proceedings, failing which the respondent is free to proceed in accordance with law.

19. With the aforesaid directions, the present application stands disposed of.

MANMOHAN, J

ASHA MENON, J

FEBRUARY 11, 2021
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