

Bharat Chaudhary Vs. Deepa Gupta and anr

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Court : Delhi

Decided On : Sep-24-2013

Judge : Rajiv Sahai Endlaw

Appellant : Bharat Chaudhary

Respondent : Deepa Gupta and anr

Advocate for Pet/Ap. : Mr. Mohd. Shariq, Mr. Shahid Ali, Mr. Rashid Hashmi, Mr. Rahul Jain

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI Date of decision:

24. h September, 2013. + RFA 199/2012 BHARAT CHAUDHARY Through: Appellant Mr. Mohd. Shariq, Adv. for Mr. Shahid Ali, Adv. Versus DEEPA GUPTA & ANR Through: Respondents Mr. Rashid Hashmi, Adv. AND + RFA 248/2012 BHARAT CHAUDHARY Through: Appellant Mr. Rahul Jain, Adv. Versus SHARAD GUPTA Respondent Through: Mr. Rashid Hashmi, Adv. CORAM: HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW RAJIV SAHAI ENDLAW, J.

1. The appellant in both the appeals is the same. The respondent/s in the two appeals are closely related to each other.

2. Both appeals challenge the money decree in the suits instituted by the respective respondent(s) against the appellant. While RFA No.199/2012 impugns

the judgment and decree dated 6th January, 2012 of the Court of the Additional District Judge (ADJ) (Central) 12, Tis Hazari Courts, Delhi in Case No.400/2009 (Unique Case ID No.02401C5966552004), of recovery of Rs.6,91,200/- with simple interest at 15% per annum from 25 th December, 2001 till the date of decree and future simple interest at 15% per annum on the principal amount of Rs.6,91,200/- and interest due till the date of decree, RFA No.248/2012 impugns the judgment and decree dated 27 th September, 2006 of the Court of ADJ, Delhi in Suit No.3/2004 of recovery of Rs.1,87,723/- with interest at the rate of 24% per annum from the date of filing of the suit till realization, both against the appellant.

3. RFA No.199/2012 is not accompanied with any application for stay of execution. Notice thereof was issued and the same was vide order dated 6th December, 2012 admitted for hearing in due course as per seniority.

4. RFA No.248/2012 was accompanied with an application for condonation of 1978 days delay in filing the same. The said appeal along with the application for condonation of delay came for consideration on 1 st June, 2012, when the file of RFA No.199/2012 was also requisitioned in the Court. Mr. G.L. Rawal, Senior Advocate (wrongly recorded as Mr. P.K. Rawal, Sr. Adv.) appearing for the appellant on that date informed the Court that the endeavour of the appellant was to pay amounts to the respondent(s), however, the rate of interest be scaled down from 24% to 12% per annum for pendente lite and future; he also offered to deposit Rs.2 lakhs in the Court and undertook to deposit the balance decretal amount of Rs.1,87,723/along with pendente lite and future interest at 12% per annum, also on or before 31st July, 2012. The senior counsel then appearing for the appellant also stated that the appellant was agreeable to pay the decretal amount of Rs.6,91,200/- subject matter of RFA No.199/2012 along with simple interest at 7% per annum from 25 th December, 2001 till payment.

5. On the aforesaid statement of the senior counsel for the appellant on 1st June, 2012, notice of the application for condonation of 1978 days delay in filing RFA No.248/2012 was issued, and which otherwise the Court appears to have been not inclined to issue. Rather, recording the willingness of the appellant to pay the amounts as aforesaid, the execution proceedings which were stated to be pending

were also stayed.

6. The appellant has deposited a total amount of Rs.3,80,420/- in RFA No.248/2012.

7. Vide subsequent order dated 17th July, 2013 in RFA No.248/2012, on the failure of the respondent therein to appear, the delay of 1978 days delay in preferring the appeal was condoned and the interim order made absolute till the disposal of the appeal.

8. RFA No.248/2012 was listed yesterday i.e. 23rd September, 2013 when the counsel for the respondent(s) in both the appeals appeared and invited attention to the order dated 1st June, 2012 (supra) and stated that the respondent(s) are willing to settle the dispute subject matter of both appeals, subject to the principal amount in both appeals being paid by the appellant together with interest at 12% per annum.

9. Accordingly, the file of RFA No.199/2012 was also requisitioned.

10. However, the counsel appearing yesterday for the appellant stated that he was the counsel for the appellant in RFA No.248/2012 only and was not the counsel for the appellant in RFA No.199/2012.

11. Finding Mr. G.L. Rawal, Senior Advocate to have appeared on behalf of the appellant in both the appeals, it was enquired from the counsel appearing yesterday for the appellant as to how such a stand of the appellant being represented by different counsels in the two appeals could be taken and smelling an attempt by the appellant to, after making the statement on 1st June, 2012 to pay the principal amount in both the appeals wriggle out of the said statement after having availed the benefit of having made such statement, the presence of the appellant and of Mr. G.L. Rawal, Senior Advocate was requested in the Court today.

12. None appeared for the appellant on the first call. On the second call, Mr. Rahul Jain, Advocate who had appeared for the appellant yesterday along with Mohd. Shariq, Advocate for Mr. Shahid Ali, Advocate for the appellant in RFA

No.199/2012, appeared. Mr. Rahul Jain, Advocate stated that he had contacted the appellant but the appellant was out of station and was thus unable to appear and sought adjournment. Mr. Mohd. Shariq Advocate for the appellant in RFA No.199/2012 stated that the said appeal had been admitted and ordered to be listed in due course and he was thus not aware why the case is listed today.

13. On enquiry, as to the presence of Mr. G.L. Rawal, Senior Advocate, Mr. Rahul Jain stated that he had asked the appellant only to communicate to Mr. G.L. Rawal, Senior Advocate.

14. Finding the aforesaid state of affairs to be totally unsatisfactory, the matter was kept after lunch and Mr. Rahul Jain, Advocate asked to inform Mr. G.L. Rawal, Senior Advocate.

15. Mr. G.L. Rawal, Senior Advocate though has appeared after lunch but states that he was briefed to appear on 1st June, 2012 when the appellant was also present in person and had made statements as recorded in the order of that date under instructions from the appellant.

16. Mr. Rahul Jain, Advocate also had yesterday stated that the appellant was present in the Court on 1st June, 2012.

17. Mohd. Shariq, Advocate appearing for the appellant in RFA No.199/2012 again feigns ignorance.

18. A perusal of the Vakalatnamas filed in the two appeals shows the Vakalatnama of Mr. Kuljeet Rawal and Mr. Rajesh Rawal, Advocates to have been first filed in RFA No.199/2012 and Vakalatnama of Mr. Shahid Ali and Mohd. Shariq, Advocates to have been filed on behalf of the appellant on 10th September, 2012. However, neither any discharge of Mr. Kuljeet Rawal and Mr. Rajesh Rawal, Advocates was taken nor have Mr. Kuljeet Rawal and Mr. Rajesh Rawal, Advocates given any no objection to the filing of the Vakalatnama of Mr. Shahid Ali and Mohd. Shariq, Advocates. Interestingly, though Vakalatnama of Mr. Shahid Ali and Mohd. Shariq, Advocates is filed on 10th September, 2012 but on 13 th September, 2012 as well as 6 th December, 2012, Mr. Kuljeet Rawal along

with Mr. Shahid Ali, Advocates appeared in RFA No.199/2012 on behalf of the appellant.

19. A perusal of the file of RFA No.248/2012 shows Vakalatnama of Mr. Amit Sharma and Mr. Rahul Jain, Advocates on behalf of the appellant. However when RFA No.248/2012 came up before this Court on 1st June, 2012, it was not Mr. Rahul Jain or Mr. Amit Sharma, Advocates who appeared along with Mr. G.L. Rawal, Senior Advocate but it was Mr. Rajesh Rawal, Advocate who appeared along with Mr. G.L. Rawal, Senior Advocate. On subsequent dates also, it was either Mr. Rajesh Rawal, Advocate or Mr. G.L. Rawal, Senior Advocate along with Mr. Rahul Jain, Advocate, who appeared for the appellant.

20. The aforesaid shows that, different counsels i.e. Mr. Mohd. Shariq in RFA No.199/2012 and Mr. Rahul Jain, in RFA No.248/2012 appearing today for the appellant in the two appeals is a pretence, only to wriggle out the statements made by the counsel appearing on 1st June, 2012 and taking advantage whereof discretionary reliefs were obtained from the Court.

21. A clear case of abuse of the process of the Court is made out. However, I am refraining from initiating any action therefor.

22. The appellant on 1st June, 2012, as recorded in order of that day, admitted the liability for the principal amount in both the decrees. As far as the interest is concerned, the same is always in the discretion of the Court. The impugned judgments and decrees award interest at a much higher rate than which the counsel for the respondent(s) has offered to accept. Though in the light of the conduct aforesaid of the appellant, the appeals are liable to be dismissed but since the counsel for the respondent(s) had yesterday stated that the respondent(s) are willing to accept interest at the rate of 12% per annum, and which is found appropriate, it is deemed expedient to dispose of both these appeals with the following directions: (i) RFA No.248/2012 is partly allowed, in view of admission of liability in the principal amount, the challenge thereagainst is dismissed and in view of concession of respondent as to rate of interest the decree is modified, by changing the rate of interest to 12% per annum; (ii) the decretal amount deposited by the appellant in RFA No.248/2012 together with interest, if any, accrued

thereon be forthwith released by the Registry in favour of the respondent therein in full and final satisfaction of the decree under challenge therein; (iii) RFA No.199/2012, in view of admission of the appellant of liability in the principal amount is dismissed insofar as challenges the decree for the principal amount; in view of the concession of the respondents, which is conditional, an opportunity is given to the appellant to pay the principal amount with interest at 12% per annum; however if the appellant does not avail of opportunity, no error is found in the decree qua interest and the appeal insofar as challenges rate of interest is dismissed; (iv) an opportunity is given to the appellant in RFA No.199/2012 to, within four weeks hereof, pay the principal amount of Rs.6,91,200/- together with simple interest at 12% per annum from 25th December, 2001 till the date of payment to the respondents therein, if the said amount is paid, the said decree shall also stand satisfied; (v) however, if the appellant fails to pay the aforesaid amount in RFA No.199/2012 within the time stipulated therefor, RFA No.199/2012 shall stand dismissed; and, (vi) I am refraining from imposing any costs on the appellant. Decree sheet be drawn up. RAJIV SAHAI ENDLAW, J SEPTEMBER 24 2013 bs..

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