

Mps Greenary Developers Limited Vs. Ots Limited and ors.

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Court : Kolkata

Decided On : Aug-13-2014

Judge : Bench

Appellant : Mps Greenary Developers Limited

Respondent : Ots Limited and ors.

Judgement :

ORDER

SHEET APO2342014 CS432014 IN THE HIGH COURT AT CALCUTTA Civil Appellate Jurisdiction ORIGINAL SIDE MPS GREENARY DEVELOPERS LIMITED Versus OTS LIMITED & ORS.BEFORE: The Hon'ble CHIEF JUSTICE MRS.MANJULA CHELLUR The Hon'ble JUSTICE BANERJEE Date : 13th August, 2014.

Mr.Mainak Bose, Advocate Mr.Gourav Das, Advocate for the appellant.

Mr.Abhrajit Mitra, Sr.Advocate Mr.Soumabha Ghose, Advocate Mr.Nikunj Berlia, Advocate for the respondent.

The Court : The plaintiff being the respondent filed a suit for recovery of money payable by four different companies that the appellant would object.

According to the appellant, it was misjoinder of cause of action and misjoinder of parties.

From the cause title we find, the four companies being the defendant nos.1 to 4 would have a common promoter-director being the defendant no.5.

The plaint would show, all the four companies were being managed by the defendant no.5 from the office at Calcutta within the jurisdiction of this Court.

As per the agreement between the parties, the transaction took place and the money became outstanding for the unpaid bills.

The appellant being the fiRs.defendant applied for dismissal of the suit on the ground of misjoinder of parties and misjoinder of cause of action.

The learned Judge kept the issue alive to be decided at the time of final hearing.

We have heard Mr.Mainak Bose, learned Counsel appearing for the appellant.

Mr.Abhrajit Mitra, learned Senior Counsel appears for the respondent/plaintiff.

Mr.Bose would submit, cursory glance to the plaint would clearly show, it was nothing but a ploy to avoid payment of revenue.

According to him, the four defendants would have four distinct transactions with the plaintiff and recovery of money, if any, due by them should be separately sued attracting court fees.

From the averments made in the plaint, we find, it is very difficult at this stage to non-suit the plaintiff on the strength of the averment of the plaint taken as sacrosanct.

At the same time, we cannot brush aside the possibility that Mr.Bose would highlight on the issue of revenue.

To strike a balance we would direct the respondent/plaintiff to deposit a sum of Rs.1.50 lakhs as security for payment of ad valorem court fees that may be subsequently found due and payable.

The respondent/plaintiff would deposit the said sum with the Registrar, Original Side, within three weeks from date who would invest the same in a suitable interest bearing fixed deposit in any nationalised bank of his choice and would keep the same renewed from time to time till the disposal of the suit.

In default, the suit will stand dismissed.

In case deposit is made, the defendants must file their written statement within three weeks from the date of communication of deposit.

However, filing of such written statement would be without prejudice to their rights and contentions of the maintainability of the suit.

Additional documents, if any, be disclosed within two weeks thereafter.

The parties would be at liberty to approach the learned single Judge taking hearing of suits, after the pleadings are complete and His Lordship may fix the date of hearing subject to His Lordships preoccupation and convenience.

The appeal is disposed of without any order as to costs.

(MANJULA CHELLUR, CJ.) (BANERJEE, J.) sd/sg AR[CR].

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