

Anju and Another vs.rampal and Another

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Court : Delhi

Decided On : Apr-11-2019

Appellant : Anju and Another

Respondent : Rampal and Another

Advocate for Def. : Mr. Pradeep Diwan, Mr. Ujjwal Jha, Ms. Sangeeta Dhingra, Mr. Anjaneya Singh

Advocate for Pet/Ap. : Mr. Anil Aggarwal

Judgement :

\$~ * IN THE HIGH COURT OF DELHI AT NEW DELHI Reserved on :

14. h February, 2019 Date of decision :

11. h April, 2019. + ANJU AND ANOTHER CS (OS) 1159/2014 Plaintiffs
Through: Mr. Anil Aggarwal, Advocate (M:

98110. 4232). versus RAMPAL AND ANOTHER Defendants Through: Mr. Pradeep Diwan, Sr. Advocate with Mr. Ujjwal Jha and Ms. Sangeeta Dhingra, Advocate for D-1 (M:

99581. 8204). Mr. and Mr. Anjaneya Singh, Advocates for D-2 (M:

98112. 5039). Jitendra Kumar CORAM: JUSTICE PRATHIBA M. SINGH
JUDGMENT Prathiba M. Singh, J.

I.A.75312014 (Order XXXIX Rule 1 & 2), I.A. 15617/2015 (Leave to defend) and I.A. 26045/2015 (Leave to defend) 1. The Plaintiff No.1 - Anju Bala is the wife of late Shri. Hari Om Rana. The Plaintiff No.2 - Kumari Bharti Rana, is her daughter, who is a minor. Defendant No.1 - Rampal is the father of Late Shri. Hari Om Rana and the father-in-law of Plaintiff No.1 and grandfather of Plaintiff No.2. Defendant No.2 is the State Bank of India, Dwarka, New Delhi.

2. The Plaintiffs, Anju Bala and Bharti Rana have filed the present suit seeking recovery of Rs. 4,07,81,344/- against the Defendants under Order CS (OS) 1159/2014 Page 1 of 12 XXXVII CPC. The case of the Plaintiffs is that she is the widow of late Shri. Hari Om Rana who was living separately from his father in Palam Vihar, Gurgaon. He was a property dealer. He passed away on 7th October, 2008 and the Plaintiffs did not have any information about his movable and immovable properties. According to the Plaintiffs, the Defendants committed various acts of fraud and misappropriated the money belonging to late Shri. Hari Om Rana. It is the allegation in the plaint that all the documents and the details of the bank accounts including the cheque books, passbooks, ATM cards, FDRs etc. pertaining to late Shri. Hari Om Rana have been taken away by her in-laws. She claims that her husband had deposited a sum of Rs.3.5 crores in his bank account which was received by him from the sale proceeds of some lands along with his father, Defendant No.1 - Rampal. The Plaintiffs approached the State Bank of Patiala Village Bamnoli, Dwarka which is now State Bank of India, which denied the existence of such an account. The Plaintiffs then filed Civil Suit No 139/2011 seeking details of all the bank accounts and fixed deposits maintained by her husband. Upon the same being disclosed by the bank, they have filed the present suit seeking recovery. The submission of the Plaintiffs is that there are various irregularities and unusual transactions which point to the fact that fraud has been committed by the Defendant No.1 both during the lifetime of late Shri. Hari Om Rana and after his demise. Specific details of the amounts which were revealed as having been paid to Mr. Rampal from the bank account of late Shri. Hari Om Rana vide cheques are as under: i) 01/

638762 ii) 17/

638764 Rs. 10,00,000/- Rs. 15,00,000/- CS (OS) 1159/2014 Page 2 of 12 iii) 16/

638768 iv) 08/

Transfer Rs. 25,00,000/- Rs. 1,36,35,000/- 3. The above amount is a total of Rs.1,86,35,000/- which was given to his father - Rampal. The amounts were paid from bank account No.65015999965 in which there was also a deposit of Rs. 3,44,27,765/-. It is the case of the Plaintiffs that the said bank account was closed down on 24th December, 2007 and on the same day, another savings bank account was opened in the Defendant No.2s bank. It is claimed that out of the above- mentioned amounts, some amount was returned by Defendant No.1 and an amount of Rs. 1,36,35,000/- was outstanding. The Plaintiffs further plead that a FDR for a sum of Rs. 1 crore was created from the bank account of her husband which had finally matured for a sum of Rs. 1,19,61,682/-. It is claimed that after the death of Shri Hari Om Rana, Rampal was shown as a nominee for the said FDR and he encashed the said FDR for a total sum of Rs. 1,12,19,339/-. The Plaintiffs claim recovery of sum of Rs. 1,36,35,000/- and 1,12,19,339/-. Interest is also claimed on the said amounts. Thus, the decree is prayed for a total sum of Rs. 4,07,81,344/-.

4. The present suit was instituted in April, 2014. The Defendants entered appearance in the matter and sought leave to defend. The stand of the bank is as under: i. That late Shri. Hari Om Rana maintained several accounts and FDRs with the bank. ii. That his father Rampal was made the nominee in the said accounts by late Shri. Hari Om Rana. CS (OS) 1159/2014 Page 3 of 12 iii. The Plaintiffs had filed two suits being Civil Suit 103/2010 and 139/2011 seeking information about late Shri. Hari Om Rana's bank accounts which were duly furnished. iv. That the bank is not involved in any conspiracy or fraud as alleged and is thus, entitled to the leave to defend.

5. IA260452015 has been filed by Defendant No.1 - Mr. Rampal, father of late Shri. Hari Om Rana stating that he is entitled to unconditional leave to defend the suit. It is stated that there was no loan transaction between him and his son. The Plaintiffs have already filed a suit for partition in the Court of Civil Judge, Gurgaon which is pending and have sought relief of partition in respect of all assets of late Shri. Hari Om Rana. The present suit is barred under Order II Rule 2 CPC and is also barred by limitation. It is further pleaded that since late Shri. Hari Om Rana died intestate, his mother is also an heir to his movable and immovable assets and

hence, in the absence of the mother, no decree can be passed in the present suit. It is stated that both the Plaintiffs i.e. the daughter-in-law and the granddaughter have been fully taken care of. That late Shri. Hari Om Rana did not own any lands and the lands which were sold by him belonged to Rampal and the money which was deposited was from the land belonging to Rampal. The transfer of the money took place during the life time of late Shri. Hari Om Rana almost a year prior to his death. Various details have been given in the application in respect of transactions with third parties for sale of lands and the reasons for withdrawal of the various sums. However, all these dealings etc. were conducted during the lifetime of late Shri. Hari Om Rana. CS (OS) 1159/2014 Page 4 of 12 6. Mr. Pradeep Dewan, learned senior counsel for the Defendant No.1, has submitted that the present is not a case for grant of decree, as the suit is itself barred by limitation. If the amounts paid by late Shri. Hari Om Rana to his father are considered as a loan, since there was no time fixed for the return of the loan, the limitation has begun to run and the loan having been given in 2007, a suit in 2014 is not maintainable. It is further submitted that the amount is not a liquidated sum and a suit under Order XXXVII CPC is not maintainable. The Defendant No.1 has raised a triable issue. Reliance is placed on the following judgments:-

"Chander Kanta Bansal vs. Rajinder Singh Anand (2008) 5 SCC117 and Milkhiram (India) Private Limited and Other vs. Chamanlal Bros AIR 1965 SC1698 7. On the other hand, Mr. Aggarwal, learned counsel for the Plaintiffs submits that the suit is based upon amounts paid through banking channels and hence the sum is a liquidated sum. The cheques through which payments were made are a species of bills of exchange under Section 6 of the Negotiable Instruments Act, 1881. The payments are under Section 70 of the Indian Contract Act, 1872 as they are not gratuitous in nature. Any amounts paid under an enactment would be covered under Order XXXVII Rule 2(ii) CPC. Since it is not the case of Defendant No.1 that the payment made by late Shri. Hari Om Rana is gratuitous, the suit is based on an enactment and hence Order XXXVII CPC suit is maintainable. In so far as limitation is concerned, it is submitted that upon the murder of late Shri. Hari Om Rana, Mr. Rampal took away all the property papers and bank related documents and hence the knowledge in so far as the impugned transactions are concerned, has to be attributed only from 15th November, 2011 when the disclosures were

made by the bank in the suit for mandatory CS (OS) 1159/2014 Page 5 of 12 injunction. The Plaintiffs have relied upon the following judgments:-

"Housing Development Finance Corporation Limited vs. Vikas Garg [CS(OS) 217/2011 decided on 20th May, 2014]. , Jatin Koticha vs. VFC Industries Private Limited (2008) 2 BomCR155 K.S. Satyanarayana vs. V.R. Narayana Rao (1999) 6 SCC104 and Ram Chander Talwar & Anr. vs. Devender K Talwar & Ors. (2010) 10 SCC671 and orders passed in CS(OS) 1073/2011 titled Anju Bala @ Anju versus HDFC Bank Limited and Others. and Civil Suit 102/2011 titled Rampal Singh Rana vs. Anju Bala Analysis and findings 8. The maintainability of the suit under Order XXXVII cannot be disputed in as much as all the monies have been paid to Defendant No.1 through banking channels and the sum is a liquidated sum. The suit cannot be dismissed as being barred by limitation as the knowledge of the actual transactions were acquired by the Plaintiffs only in 2011. The present suit under Order XXXVII has been filed by the Plaintiffs who are two of the legal heirs of late Shri. Hari Om Rana. The dispute between the parties is a family matter. The documents placed on record i.e. the bank statements etc. are the basis of the suit. Shri. Hari Om Rana to whom the bank accounts belonged, is no longer alive. The Plaintiff No.1 is his wife and Plaintiff No.2 is the daughter of late Shri. Hari Om Rana. There are litigations which are already pending between the parties including a suit for partition. Late Shri. Hari Om Rana has died intestate and accordingly has 3 legal heirs i.e. his wife, daughter and his mother. In Civil Suit No 102/2011 the Civil Judge, Gurgaon has declared all three parties as 1/3rd shareholder of the estate of CS (OS) 1159/2014 Page 6 of 12 late Shri. Hari Om Rana and a preliminary decree has been passed in respect of a residential house owned by late Shri. Hari Om Rana. In CS(OS) 1073/2011, a suit was filed by the Plaintiffs against HDFC bank. In the said suit, considering the provisions of the Banking Regulation Act, 1949, the Court decreed the suit against the bank in the following terms: - submits that 17. Having regard to the Section 45ZA of the Banking Regulation Act, the settled position of law and the stand taken by the bank that they are prepared to release the amount in favour of the plaintiff No.1, who is the nominee, subject to the plaintiff No.1 complying with the necessary formalities, the present suit is decreed on the following terms: (i) it is agreed between the parties that the amounts, which were lying in the bank account of late

Sh. Hari Om Rana, will be released to the plaintiffs along with interest after the statutory deductions; (ii) plaintiffs the necessary formalities including execution of indemnity bond, shall be complied with by the plaintiff No.1; (iii) counsel for the plaintiffs on instructions submits that the entire amount shall be kept in a fixed deposit in the name of minor (plaintiff No.2) for her benefit, and in case the amount is to be utilized the property will also be purchased in the name of minor; and (iv) it is also made clear that the amount so released shall be subject to further orders which may be passed in any other proceedings which may be initiated by any of the legal heirs of the deceased, Sh. Hari Om Rana.

18. Accordingly, the suit is decreed in above agree terms. for purchasing of property, CS (OS) 1159/2014 Page 7 of 12 9. In the present suit however, the entries which form the basis of the suit and are claimed to be the loan given by late Shri. Hari Om Rana to his father are not in dispute, however, the payments made by late Shri. Hari Om Rana during his lifetime to his father cannot, at this stage, be termed as a loan without any evidence to this effect. The Defendant No.1 - Mr. Rampal has averred in the application for leave to defend, that the lands in fact belong to him and only the sale consideration was deposited in the bank account of late Shri. Hari Om Rana to enable other property transactions. Thus, without a trial, it cannot be said that the amounts which were paid from late Shri. Hari Om Ranas account were a loan to his father. There is no loan agreement placed on record. Furthermore, it has already been held that late Shri. Hari Om Ranas mother is also one of the legal heirs to the estate of late Shri. Hari Om Rana and owns 1/3rd share. She ought to have been impleaded as a party to the present suit. However, in so far as the FDR is concerned, for a sum of Rs.1,12,19,339/-, the same has been encashed by Mr. Rampal after the death of the deceased. The question as to whether he was a nominee in the bank account or FDR and if so, could he have taken these sums, is a question to be gone into in trial. It is the admitted position however, that the said amount has been taken by Mr. Rampal. In CS(OS)1073/2011 it is the clear finding of this Court that a nominee doesnt become the owner of the amounts. A perusal of the following paragraphs establishes this fact: - A bare reading of Section 45ZA of the 14. Banking Regulation Act would show that any depositor, with a Bank, may nominate a person in a prescribed manner, who, in the event of the death of the

depositor, would be entitled to return of the money CS (OS) 1159/2014 Page 8 of 12 by the Bank. This Section also makes it clear that the payment made by a banking company in accordance with the provisions of this Section shall constitute a full discharge to the banking company of its liability in respect of the deposit. The provision further makes it clear that nothing contained in this Section would affect the right or claim which any other person may have against the nominee to whom the payment is made under this Section.

15. In the case of Ram Chander (Supra) the Apex Court has held that section 45 ZA(2) merely puts the nominee in the shoes of the depositor after his death and clothes him with the exclusive right to receive the money lying in the account. It has also been held that on receipt of the money, the nominee, however, does not become the owner of the money lying in the account is the Banking Regulation Act, 1949, nor Section 45 ZA (2) concerned with the question of succession. 10. Thus, the bank having confirmed that Mr. Rampal had withdrawn the amount as a nominee of late Shri. Hari Om Rana, he is liable to secure the said amount. Further, in so far as the explanations given by Mr. Rampal in his leave to defend application in paragraph H and I are concerned, all these issues as to why the monies were withdrawn from late Shri. Hari Om Ranas account and for what purpose they were put to use have to be thrashed out in trial. However, the FDR amount of Rs. 1,12,19,339/- deserves to be secured. Mr. Rampal has taken a stand that he has given a loan of Rs. 2 crores to late Shri. Hari Om Rana during his life time. This fact also needs to be established in trial as there are no documents placed by Defendant No.1 to show in what manner the loans were extended by him to his son. The admitted position remains that various amounts from late Shri. Hari Om CS (OS) 1159/2014 Page 9 of 12 Ranas account had been transferred to the account of Mr. Rampal.

11. The law under Order XXXVII suits is quite well settled. If there are issues which need to be gone into in trial, but the Plaintiffs have made out a case for being secured, leave to defend can be granted conditionally. There are various factual issues that need to be gone into and the present is not a case for a decree being passed at this stage especially because the matter is one amongst family members and there seems to be some basis for the Defendant No.1 to argue that

the land in fact belongs to him. The judgments cited by both sides show that the question as to granting or non-granting of leave to defend depends on the facts of each case. Admittedly, there is no loan agreement and there are no documents admitting liability. However, the encashment of the FDR and the payments made from the bank account of late Shri. Hari Om Rana to his fathers bank account are circumstances that go against the Defendant No.1. It is the settled position in law that if the pleadings of the parties require to be adjudicated by the Court, the exceptional procedure under Order XXXVII CPC should not lead to decreeing of the suit. While there are triable issues which have been raised, the leave to defend cannot also be unconditional. The Supreme Court in IDBI Trusteeship Services Ltd. v. Hubtown Ltd. (2017) 1 SCC568 has held as under: 17. Accordingly, the principles stated in para 8 of Mechelec case [Mechelec Engineers & Manufacturers v. Basic Equipment Corpn., (1976) 4 SCC687] will now stand superseded, given the amendment of Order 37 Rule 3 and the binding decision of four Judges in Milkhiram case [Milkhiram (India) (P) Ltd. v. Chamanlal Bros., AIR 1965 SC1698: (1966) 68 Bom LR36], as follows: CS (OS) 1159/2014 Page 10 of 12 is entitled the defendant 17.1. If the defendant satisfies the court that he has a substantial defence, that is, a defence that is likely to succeed, the plaintiff is not entitled to leave to sign judgment, and to unconditional leave to defend the suit. 17.2. If the defendant raises triable issues indicating that he has a fair or reasonable defence, although not a positively good defence, the plaintiff is not entitled to sign judgment, and the defendant is ordinarily entitled to unconditional leave to defend. 17.3. Even if the defendant raises triable issues, if a doubt is left with the trial Judge about the defendant's good faith, or the genuineness of the triable issues, the trial Judge may impose conditions both as to time or mode of trial, as well as payment into court or furnishing security. Care must be taken to see that the object of the provisions to assist expeditious disposal of commercial causes is not defeated. Care must also be taken to see that such triable issues are not shut out by unduly severe orders as to deposit or security. 17.4. If the defendant raises a defence which is plausible but improbable, the trial Judge may impose conditions as to time or mode of trial, as well as payment into court, or furnishing security. As such a defence does not raise triable issues, conditions as to deposit or security or both can extend to the entire principal sum together with

such interest as the court feels the justice of the case requires. 17.5. If the defendant has no substantial defence and/or raises no genuine triable issues, and the court finds such defence to be frivolous or vexatious, then leave to defend the suit shall be refused, and the plaintiff is entitled to judgment forthwith. 17.6. If any part of the amount claimed by the plaintiff is admitted by the defendant to be due from him, leave to defend the suit, (even if triable issues or a substantial defence is raised), shall not be granted unless the amount so admitted to be due is deposited by CS (OS) 1159/2014 Page 11 of 12 the defendant in court. 12. The Plaintiff No.1 is the widow of late Shri. Hari Om Rana and Plaintiff No.2 is his daughter. Defendant No.1 is in control of the entire estate and the estate may be whittled away by the time the suit is tried and adjudicated. Thus, some conditions have to be imposed. The IAs filed by the bank and Defendants No.1, Mr. Rampal seeking leave to defend are accordingly allowed in the following terms:-

"1. Leave to defend is granted conditionally to Defendant No.1 subject to Defendant No.1 furnishing security for a sum of Rs.4 crores to the satisfaction of the Registrar General of this Court within four weeks. In so far as the Defendant No.2 bank is concerned, it is entitled to unconditional leave.

2. Defendant No.2 bank is directed not to permit withdrawal of any amounts from any of the accounts of late Shri. Hari Om Rana without informing the Plaintiffs.

13. The IAs are disposed of in the above terms. CS (OS) 1159/2014 14. List the suit on 23rd July, 2019. APRIL11 2019 MR/Agastya Judge PRATHIBA M. SINGH CS (OS) 1159/2014 Page 12 of 12

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