

Amanpreet Kohli vs Pankaj Dayal on 10 September, 2020

Author: Mukta Gupta

Bench: Mukta Gupta

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IN THE HIGH COURT OF DELHI AT NEW DELHI
CS (COMM) 175/2020

AMANPREET KOHLI

Represented by:

Mr.Arjun Si

versus

PANKAJ DAYAL

Represented by:

Mr.Raj Vard

defendant.

Mr.Lokesh B

applicant /

Ltd.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER

% 10.09.2020 The hearing has been conducted through Video Conferencing. I.A.8004/2020 (under Order XXXIX Rule-4 CPC-by Meters & Instruments Pvt. Ltd. through its authorized representative)

1. In the present suit the plaintiff has sought recovery of a sum of 4.30 crores advanced as loan vide Loan Agreement Dated 1st September, 2016 along with the interest thereon from the defendant. It was the case of the plaintiff that the defendant in the suit i.e. Pankaj Dayal had while executing the Loan Agreement simultaneously executed a Receipt and Promissory Note. The entire transaction of the loan was in cash and 3 post dated cheques for a sum of 1.5 crore each out of which 20 lacs was the interest amount were issued for a period of 8 months.

2. Grievance of the plaintiff was that when the 3 cheques were presented Signing Date:10.09.2020 21:47:13 This file is digitally signed by PS to HMJ Mukta Gupta they were dishonoured not on account of insufficient funds but on account signatures differing. Plaintiff also placed on record the material that the defendant and his associates were involved in number of FIRs relating to cheating and misappropriation.

3. While issuing an ad-interim injunction as the defendant's counsel was present and considering the modus operandi adopted by the defendant, this Court directed that the defendant will not create any further third party rights in the assests/properties of the M/s Real Tech Constructions Pvt. Ltd. and M/s City Emporium Pvt. Ltd. (and the City Emporium Mall) without seeking leave of this Court.

4. By this application applicant- Meters & Instruments Pvt. Ltd. claims that the applicant is the rightful owner of the said Mall. It is stated that despite the learned counsel for the defendant being present on the first date when the ad-interim injunction was passed, these facts which have been now listed in the application were not brought to the notice of this Court.

5. It is stated in the application that the applicant is the owner of the land ad-measuring 9692.11 sq. Yards situated at Plot No. 143A, Industrial Area, Phase-I, Chandigarh on which a building known as City Emporium Mall has been constructed consisting of retail and commercial areas. The applicant and Real Tech Construction Pvt. Ltd. of which the defendant is the sole Director had entered into a Property Development Agreement dated 2nd March, 2006 and the defendant's company was obliged to construct, development and operationalize the mall after obtaining all requisite permissions and approvals. The applicant's and defendant's share was 45:55 percent and thus the development cost at the floor area was to be distributed between parties in accordance thereto. However, the mall was Signing Date:10.09.2020 21:47:13 This file is digitally signed by PS to HMJ Mukta Gupta never made operational by the defendant's company and the said company has now been abandoned. The said Agreement would have come into force only if the defendant's company would have performed its part of the contract.

6. Considering the facts now pointed out in this application and the fact that the company Real Tech Construction Pvt. Ltd of which the defendant is the sole Director is presently in default and the Property Development Agreement between the parties has already been terminated and the present suit is a suit for recovery against the defendant in its individual capacity which facts were concealed before this Court by the plaintiff and defendant when the ad-interim injunction was granted, this Court deems it fit to vacate the interim injunction granted vide order dated 16th June, 2020.

7. Learned counsel for the plaintiff states that the plaintiff was not aware of the facts which have now been brought to the notice of the Court. The interim order dated 16th June, 2020 stands vacated.

8. The application is accordingly disposed of. CS (COMM) 175/2020 and I.A. 4478/2020 (under Order XXXIX Rule 1 and 2 CPC)

1. No written statement in the suit and the reply affidavit to the application has been filed by the defendant.

2. Learned counsel for the defendant states that he has filed the written statement but the same is not on record.

3. List the suit and application for hearing on 15 th December, 2020

4. Order be uploaded on the website of this Court.

MUKTA GUPTA, J.

SEPTEMBER 10, 2020/SU Signing Date:10.09.2020 21:47:13 This file is digitally signed by PS to
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