



2024:DHC:4064-DB



\$~6

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

+ **FAO(OS) 77/2023 & CM APPL. 34242/2023**

SAMYAK PROJECTS PRIVATE LIMITED Appellant

Through: Mr. Vivek Kohli, Senior Advocate
with Ms. Neetika Bajaj, Mr. Siddhant
Puri and Ms. Bhavya Bhatia,
Advocates

versus

ANSAL HOUSING LIMITED Respondent

Through: Mr. Vikas Tiwari, Mr. Kumar
Deepraj and Ms. Arushi Rathore,
Advocates

%

Date of Decision: 14th May, 2024

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

JUDGMENT

MANMOHAN, ACJ: (ORAL)

1. Present appeal has been filed under Section 10 of Delhi High Court Act, 1966, impugning the order dated 26th April, 2023 ('impugned order') passed by the learned Single Judge in CS(OS) No. 497/2018, to the extent of finding given by the Court on the issue of limitation.

2. Learned senior counsel for the Appellant states that in the present appeal the Appellant challenges the findings of the learned Single Judge set out in paragraphs 29 to 38, which deal with the issue of limitation. He states that the learned Single Judge has erred in deciding the issue of limitation



finally at this stage of grant of leave to defend whereas, the issue of limitation in the present case is an issue of fact and law. He prays for a limited relief in the present appeal that the issue of limitation be left open and be decided at the final stage i.e., post-trial of the suit filed by the Respondent.

3. He states that the learned Single Judge relied upon the Form-16 A (TDS Traces) dated 26th October, 2015 ('TDS certificate') to erroneously conclude that the payment of TDS reflected therein pertains to the transaction in question. He states that the said certificate reflects five independent deposits towards interest by the Appellant in favour of the Respondent, however, the learned Single Judge has failed to appreciate that this could be with respect to any of the plethora of transactions between the parties herein. He states that the Appellant has never conceded that any of the five transactions reflected in this certificate pertained to the transaction arising from the Deed of Cancellation dated 20th April, 2013.

4. He fairly states that in its application seeking leave to defend, the Appellant herein has neither pleaded nor given details of the other independent transactions between the parties, for which the payments towards interest as reflected in the certificate dated 26th October, 2015 were made to the Respondent.

5. No other grounds were urged by the Appellant.

6. In reply, learned counsel for the Respondent has relied upon the application for the leave to defend and states that the Appellant has not raised the pleas mentioned in the grounds of appeal before the learned Single Judge. He states that in the application seeking leave to defend the Appellant has not pleaded or furnished any details of the alleged



independent transactions between the parties to which the said payments of interest pertain.

7. We have heard the learned counsel for the parties and perused the record.

8. The facts to the extent relevant for deciding the limited issue raised in the present appeal are set out hereunder.

9. The underlying suit was instituted by the Respondent under Order XXXVII of CPC seeking recovery of Rs. 11,79,83,525 along with pendente lite and future interest till the realization of the amount in full from the Appellant. The suit has been filed on the basis of Deed of Cancellation dated 20th April, 2013, whereunder, the Appellant undertook to refund the amount of Rs. 12 crores with interest at 24% per annum to the Respondent. It is stated in the plaint that as per the terms of the Deed of Cancellation, the Appellant was obligated to liquidate its entire liability towards the Respondent on or before 31st December, 2013. It is further stated that the time for repayment was extended till 31st March, 2015 at the request of the Appellant. It is stated that the Appellant was regularly deducting TDS at the rate of 10% on the interest accrued and depositing the same to the credit of the Government. It is stated that the Appellant paid a sum of Rs. 1 crore on 27th March, 2015 as an 'on account' payment. It is stated that the Appellant lastly deposited TDS amount of Rs. 13,96,886/- on 30th September, 2015 but did not make payment towards the interest; and in support of this transaction relied upon the TDS certificate dated 26th October, 2015.

10. The Appellant in its application seeking unconditional leave to defend raised an objection that the suit is barred by limitation on the plea that the last 'on account' payment was made to the Respondent on 27th March, 2015,



whereas, the underlying suit has been filed on 20th September, 2018. It was stated that the deposit of TDS on 30th September, 2015 as reflected in the TDS certificate is not an admission or acknowledgement of liability and would, thus, not extend the period of limitation under Section 19 of the Limitation Act, 1963 ('Act of 1963').

11. The learned Single Judge by the impugned order granted unconditional leave to defend to the Appellant, however, with respect to the issue of limitation, the Court rejected the submissions of the Appellant that the suit is barred by limitation and held as under:

WHETHER THE SUIT IS BARRED BY LIMITATION

"29. The learned senior counsel for the defendant has asserted that as the case of the plaintiff itself is that the last payment made against the Deed of Cancellation was received by the plaintiff from the defendant on 27.03.2015, the present Suit having been filed on 20.09.2018, is, therefore, barred by limitation. He has submitted that the mere fact of the deposit of TDS on 30.09.2015 by the defendant would not extend the period of limitation.

30. The above submission is disputed by the learned senior counsel for the plaintiff contending that the TDS deposited is to the account of the plaintiff and, therefore, would extend the period of limitation.

31. Section 19 of the Limitation Act, 1963 reads as under:

"19. Effect of payment on account of debt or of interest on legacy.—Where payment on account of a debt or of interest on a legacy is made before the expiration of the prescribed period by the person liable to pay the debt or legacy or by his agent duly authorised in this behalf, a fresh period of limitation shall be computed from the time when the payment was made: Provided that, save in the case of payment of interest made before the 1st day of January, 1928, an acknowledgment of the payment appears in the handwriting of, or in a writing signed by, the person making the payment."

32. To attract the above provision and take benefit thereof, the plaintiff has to prove that:-

(a) The payment on account of the debt was made by the defendant



before the expiration of the prescribed period;

(b) The payment was acknowledged by some term of writing either in the handwriting of the payer or signed by the payer.

33. *Section 194A of the Income Tax Act obliges the person responsible for paying interest to another to deduct, at the time of credit of such income to the account of the payee or at the time of payment thereof in cash or by an issue of a cheque or draft or by any other mode, whichever is earlier, income tax thereon at the rate in force. Explanation to Section 194A (1) further provides that where any income by way of interest is credited to any account in the books of account of the person liable to pay such income, such crediting shall also be deemed to be a credit of such income to the account of the payee making such person liable to deduct TDS.*

34. *Section 198 of the Income Tax Act further provides that all sums deducted shall, for the purpose of computing the income of the assessee, be deemed to be income received by such assessee.*

35. *In **Baranagore Jute Factory PLC. Mazadoor Sangh (BMS)** (supra), the Supreme Court observed that the amount deposited as TDS also partakes the character of compensation that was payable by NHAI in the said case.*

36. *In the present case, as the deposit of TDS was made on 30.09.2015, in terms of Section 198 of the Income Tax Act, it would be deemed to be an income received by the plaintiff. The said payment being made against the Cancellation Deed, which is not denied by the defendant, would in terms of Section 19 of the Limitation Act, extend the period of limitation. The issue of the TDS Certificate by the defendant shall satisfy the second condition of Section 19 of the Limitation Act as culled out above.*

37. *In **M/s Utility Powertech Limited** (supra), the Court held that the deduction of TDS is not an admission of liability. The same was the ratio in **Actal** (supra) and in **S.P. Brothers** (supra). The said judgments would, however, have no application to the facts of the present case. Though deposit of TDS may not act as an acknowledgment of debt by the defendant, it being a payment made by the defendant on account of the plaintiff and on account of a debt, would lead to a fresh period of limitation being computed from the date when the deposit of TDS was made.*

38. *The Suit therefore, cannot be said to be barred by limitation.”*

12. The Appellant in the present appeal has not disputed the findings in law returned by the learned Single Judge with respect to the effect of deposit of TDS leading to a fresh period of limitation from the date when the deposit of TDS was made, as contemplated under Section 19 of the Act of 1963.

13. Instead, the Appellant has sought to raise a dispute of fact with



2024:DHC:4064-DB



respect to the issue whether the transaction of Rs. 13,96,886/- dated 30th September, 2015 reflected in the TDS certificate pertains to the transaction emanating from the Deed of Cancellation or not. The Appellant has sought to contend that the said payment of Rs. 13,96,886/- pertains to a separate transaction between the parties. We are unable to accept this contention of the Appellant as it has no basis in the pleadings of the Appellant in the application seeking leave to defend. Since no such plea was raised before the learned Single Judge, the conclusion drawn by the learned Single Judge in the impugned judgment on the basis of the TDS certificate is in consonance with both the material on record and in law.

14. We are therefore, unable to accept the plea of the Appellant that the issue of limitation ought to be left open to be adjudicated at the final disposal.

15. The present appeal is accordingly dismissed along with pending applications. It is however clarified that dismissal of appeal has no bearing on FAO(OS) 85/2023 filed by the Respondent against the impugned order.

ACTING CHIEF JUSTICE

MANMEET PRITAM SINGH ARORA, J

MAY 14, 2024/hp/ms