

**IN THE HIGH COURT AT CALCUTTA
(Ordinary Original Civil Jurisdiction)**

ORIGINAL SIDE

[COMMERCIAL DIVISION]

Present:

The Hon'ble Justice Krishna Rao

**IA No: GA/2/2019
(Old No. GA/2406/2019)**

In

CS/133/2019

ANCHOR INVESTMENTS PRIVATE LIMITED

Vs.

TCI FINANCE LIMITED

Mr. Rajarshi Dutta, Adv.

Mr. Debargha Basu, Adv.

Mr. V.V.V. Sastry, Adv.

...For the plaintiff.

Mr. Aritra Basu, Adv.

Mr. Abhijit Sarkar, Adv.

...For the defendant.

Heard on : 01.12.2022

Judgment on : 08.12.2022

Krishna Rao, J.:

The plaintiff has filed the instant application for final Judgment and Decree for a sum of Rs. 83,46,507/- against the defendant under the provisions of Chapter XIII A of the Original Side Rules of this Court.

The plaintiff had initially filed the instant suit before the Ordinary Original Civil Jurisdiction. Subsequent to filing of the suit, the plaintiff had filed an application being GA 5 of 2021 praying for transfer of the instant suit along with the pending applications before this Court (Commercial Division) vide order dt. 19.07.2022, this Court has allowed the prayer (a) to (c) of the Master's summons.

The plaintiff had also filed an application being GA 2198 of 2019 but vide order dt. 26.11.2019, the said application was withdrawn. Vide order dt. 18.08.2020, when the suit was proceeded with the Ordinary Original Civil Jurisdiction, the Court had passed an interim order directing the defendant to furnish security for the sum of Rs. 83,46,507/- to the satisfaction of Registrar High Court within a period of two weeks from the date of passing the order. As the defendant has not furnished security in terms of the order dt. 18.08.2020, the Court had passed an order on 15.09.2020 directing the ICICI Bank, Kheraitabad Branch, Hyderabad to freeze account no. 000805002397 only to the extent of Rs. 83,46,507/- standing in the name of TCI Finance Limited and the said freezing shall be to the credit of CS 133 of 2019.

In the mean time being aggrieved and dissatisfied with the order dt. 18.08.2020, the defendant had preferred an appeal being APO No. 85 of 2020 but due to the order dt. 15.09.2020, the appeal preferred by the defendant was become infructuous and accordingly the said appeal was dismissed on 29.09.22020.

Inspite of the several directions passed by this Court, the defendant has not filed affidavit-in-opposition with respect of the instant application and accordingly the plaintiff had preferred an application being GA 3 of 2020 praying for placing the instant application (GA 2406 of 2019) for immediate hearing under the heading "Chamber application for final disposal (unopposed)". The application filed by the plaintiff is disposed of in terms of prayer (c) of the Master's summons by directing the application being GA 2406 of 2019 to be placed for hearing immediately under the heading "Chamber application for final disposal" and the interim order dt. 15.09.2020 was made absolute.

As the defendant has not filed affidavit-in-opposition in the instant case inspite of several opportunities given to the defendant, this Court has taken up for hearing of the instant application.

The Counsel for the defendant has raised preliminary objection on the ground that the plaintiff has prayed for judgment and decree in terms of the provisions of Chapter XIII A of the Rules on the Original Side of this Court but the said rule is not applicable in the Commercial Division. The Counsel for the defendant further submits that after the transfer of the instant suit before this Court, the plaintiff ought to have taken appropriate steps for

amendment of the prayer of the instant application but the petitioner has not taken any steps and thus no decree can be passed by this Court under the said Chapter.

Counsel for the defendant has relied upon Order XIII A of the Code of Civil Procedure and submits that in sub-rule 4 the procedure has been prescribed for summary judgment but the plaintiff has not complied with the provisions of Clause 4 of the said order.

Counsel for the defendant further submits that in para 46 as well as in prayer (b) of the Master's summons, the plaintiff has prayed for decree under Chapter XIII A of the Original Side Rules though the said rules is not applicable before this Court and thus the application filed by the plaintiff is liable to be dismissed.

Counsel for the plaintiff submits that in usual course of business between the plaintiff and the defendant, the defendant through its representative had approached the plaintiff for short time financial assistance for an aggregate sum of Rs. 1 Crore in the form of corporate deposit and as per the request of the defendant, the plaintiff had agreed to pay the said amount.

Counsel for the plaintiff submits that on 13.01.2016, the plaintiff has transferred an amount of Rs. 50,00,000/- in the account of the defendant from HSBC Bank for 180 days with effect from 13.01.2016 to 10.07.2016 @ 17% per annum. Subsequently on 25.01.2016, the plaintiff has again transferred an amount of Rs. 50,00,000/- in the account of the defendant

for 180 days with effect from 25.01.2016 to 22.07.2016 @ 17% per annum. Vide letter dt. 25.01.2016, the defendant had agreed to repay the said amount with the interest. On 25.01.2016, the defendant had forwarded the post dated cheques for interest and principal amount, letter of undertaking, receipt of ICD amount and demand promissory note. The defendant had made payment of Rs. 3,76,230/- towards the interest.

As per the request of the defendant, the ICD in respect of the first as well as second transactions were extended from time to time which are as follows :

| <i>Extension</i> | <i>Term</i> | <i>Period</i> |
|------------------|--------------------------|---------------|
| 1 | 11/7/2016 to 08/01/2017 | 182 days |
| 2 | 09/01/2017 to 07/07/2017 | 180 days |
| 3 | 08/07/2017 to 04/11/2017 | 120 days |
| 4 | 05/11/2017 to 04/02/2018 | 92 days |

| <i>Particulars</i> | <i>Interest amount</i> | <i>Date</i> |
|---------------------------|------------------------|-------------|
| 1 st Extension | Rs. 3,80,410/- | 27.01.2017 |
| 2 nd Extension | Rs. 3,77,260/- | 15.07.2017 |
| 3 rd Extension | Rs. 2,51,507/- | 21.11.2017 |
| 4 th Extension | Rs. 1,92,822/- | 21.02.2018 |

First Part

a. Principal Sum

Rs. 25,00,000/-

| | |
|--------------------|------------------------------|
| <i>b. Term</i> | <i>177 days</i> |
| <i>c. Period</i> | <i>5/2/2018 to 31/7/2018</i> |
| <i>d. Interest</i> | <i>17% per annum</i> |

Second Part

| | |
|-------------------------|------------------------------|
| <i>a. Principal Sum</i> | <i>Rs. 25,00,000/-</i> |
| <i>b. Term</i> | <i>208 days</i> |
| <i>c. Period</i> | <i>5/2/2018 to 31/8/2018</i> |
| <i>d. Interest</i> | <i>17% per annum</i> |

After the extension of time, the defendant had again submitted required documents to the plaintiff. On 9th August, 2018, the defendant has paid Rs. 25,00,000/- together with interest of Rs. 1,93,870/- being the part payment of the first transaction and the defendant had further requested for extension for remaining amount and accordingly same was extended as follows :

| <i>Extension/Renewal</i> | <i>Term</i> | <i>Period</i> |
|--------------------------|---------------------------------|----------------|
| <i>1</i> | <i>1/9/2018 to 30/09/2018</i> | <i>30 days</i> |
| <i>2</i> | <i>01/10/2018 to 31/10/2018</i> | <i>31 days</i> |

Upon extension of time, the defendant had sent the following documents :

- “a. Letter of undertaking dated 29 September 2018;*
- b. Demand promissory note dated 29 September 2018;*

c. Money receipt dated 29 September 2018;

d. Cheques covering the principal sum and interest payable thereon both dated 1 November 2018.”

On expiry of the term period when the plaintiff had called the defendant for payment, the defendant had requested for some time for payment and as per the instructions of the defendant, the plaintiff had presented the cheque of Rs. 25,00,000/- for encashment in the month of January, 2019 but the same was dishonoured with the remark “Funds Insufficient” and accordingly the plaintiff had issued notice to the defendant for initiation of proceedings under Section 138 of the Negotiable Instrument Act as the defendant is liable to pay Rs. 27,81,781/- being the part of the first transaction along with interest.

In the meantime, the tenure of ICD in respect of the second transaction had also expired for the total amount of Rs. 50,00,000/-out of which the defendant had paid interest of Rs. 3,76,230/- to the plaintiff till 28th July, 2016. As per the request of the defendant, the time for payment of second transaction was also extended from time to time which are as follows

:

| <i>Extension/Renewal</i> | <i>Term</i> | <i>Period</i> |
|--------------------------|---------------------------------|-----------------|
| <i>1</i> | <i>23/7/2016 to 18/01/2017</i> | <i>180 days</i> |
| <i>2</i> | <i>19/01/2017 to 17/07/2017</i> | <i>180 days</i> |
| <i>3</i> | <i>18/07/2017 to 31/12/2017</i> | <i>167 days</i> |

| | | |
|---|--------------------------|---------|
| 4 | 01/01/2018 to 01/04/2018 | 91 days |
|---|--------------------------|---------|

| <i>Particulars</i> | <i>Interest amount</i> | <i>Date</i> |
|---------------------------------|------------------------|-------------------|
| <i>1st Extension</i> | <i>Rs. 3,76,230/-</i> | <i>30.01.2017</i> |
| <i>2nd Extension</i> | <i>Rs. 3,77,260/-</i> | <i>05.08.2017</i> |
| <i>3rd Extension</i> | <i>Rs. 3,50,014/-</i> | <i>28.12.2017</i> |
| <i>4th Extension</i> | <i>Rs. 1,90,726/-</i> | <i>05.04.2018</i> |

First Part

- a. Principal Sum* Rs. 25,00,000/-
- b. Term* 182 days
- c. Period* 02/04/2018 to 30/09/2018
- d. Interest* 17% per annum

Second Part

- a. Principal Sum* Rs. 25,00,000/-
- b. Term* 213 days
- c. Period* 02/04/2018 to 31/10/2018
- d. Interest* 17% per annum

| <i>Extension/Renewal</i> | <i>Amount</i> | <i>Term</i> | <i>Period</i> |
|--------------------------|-----------------------|---------------------------------|----------------|
| <i>1</i> | <i>Rs 25,00,000/-</i> | <i>1/10/2018 to 30/11/2018</i> | <i>61 days</i> |
| <i>2</i> | <i>Rs 25,00,000/-</i> | <i>01/10/2018 to 31/12/2018</i> | <i>92 days</i> |

In all time after the extension of time, the defendant had submitted the following documents :

- “a. Letters of undertaking dated 29 September 2018;*
- b. Demand promissory note dated 29 September 2018;*
- c. Money receipts dated 29 September 2018;*
- d. Cheques covering the principal sum and interest payable thereon dated 1 December 2018 and 1 January 2019.”*

On expiry of the extended period, the plaintiff had requested the defendant for payment and the defendant had sought for some time for repayment of loan along with interest and the plaintiff had accepted the request made by the defendant. Subsequently, the defendant had issued two cheques to the plaintiff for an amount of Rs. 25,00,000/- each and plaintiff had presented the said cheques for encashment but said cheques were dishonoured. The plaintiff had issued notice to the defendant for initiation of proceeding under section 138 of the Negotiable Instruction Act. In spite of receipt of notice the defendant has neither paid principal amount nor interest to the plaintiff.

Considered the rival submissions of the respective parties, perused the application, various orders and the documents relied by the plaintiff.

As regard the contention raised by the defendant with regard to maintainability this Court finds that the plaintiff had initially filed the instant suit before the Ordinary Original Civil Jurisdiction and during the pendency of the suit before the said Court, the plaintiff had filed an application under Chapter XIII A of the Original Side Rule of this Court.

Subsequently the plaintiff has filed an application for transfer of the suit along with connected application before this Court (Commercial Division) being IA No. GA 5 of 2021 in the Master's Summons the plaintiff has prayed following reliefs :-

“a) An order be passed directing transfer of the present suit being C.S. No. 133 of 2019 along with all pending application(s) therein to the Commercial Division of this Hon'ble Court;

b) Upon the present suit being transferred to the Commercial Division of this Hon'ble Court, the petitioner's application for summary judgment, being GA No. 2406 of 2019, be placed for hearing immediately under the heading “Chamber Application for Final Disposal” before the appropriate Bench taking up such matters.

c) An order be passed directing the department to mark the suit as the Commercial suit and permit the petitioner to file all additional documents as may be require dunder the Commercial Courts Act, 2015.

d) Ad-interim orders in terms of the prayer above.

e) Such further and/or other orders be passed and/or direction or directions be given as this Hon'ble Court any deem fit and proper.”

The G.A. 5 of 2021 was disposed of on 19.07.2022 by passing the following order :

“This is an application for transfer of this suit from the Ordinary Original Civil Jurisdiction to the Commercial Division.

It is fairly submitted by the parties that the disputes which from the subject matter of the suit is a “commercial dispute” within the meaning of the Commercial Courts Act. 2015. The claim in this suit is also within the ambit of the Act.

In view of the aforesaid, there shall be an order in terms of prayers (a) to (c) of the Master's Summons.

Accordingly, GA/5/2021 stands disposed of.”

In the said order, the application filed by the plaintiff for summary judgment being G.A. No. 2406 of 2019 (Instant Application) was also transferred. As the plaintiff had filed the instant application before the Ordinary Original Civil Jurisdiction and accordingly the plaintiff had prayed for a summary judgment under Chapter XIII A of the Original Side Rules of this Court.

It is well settled law that mere mentioning wrong provision the application cannot be rejected. In the case of P.K. Palanisamy -versus- N. Arumugham & Anr. reported in (2009) 9 SCC 173, the Hon'ble Supreme Court held that :

“27. Section 148 of the Code is a general provision and Section 149 thereof is special. The first application should have been filed in terms of Section 149 of the Code. Once the court granted time for payment of deficit court fee within the period specified therefor, it would have been possible to extend the same by the court in exercise of its power under Section 148 of the Code. Only because a wrong provision was mentioned by the appellant, the same, in our opinion, by itself would not be a ground to hold that the application was not maintainable or that the order passed thereon would be a nullity. It is a well-settled principle of law that mentioning of a wrong provision or non-mentioning of a provision does not invalidate an order if the court and/or statutory authority had the requisite jurisdiction therefor.

28. *In Ram Sunder Ram v. Union of India [(2007) 13 SCC 255 : (2008) 2 SCC (L&S) 603 : (2007) 9 Scale 197] it was held: (SCC pp. 260-61, para 19)*

“19. ... It appears that the competent authority has wrongly quoted Section 20 in the order of discharge whereas, in fact, the order of discharge has to be read having been passed under Section 22 of the Army Act.

‘9. It is well settled that if an authority has a power under the law merely because while exercising that power the source of power is not specifically referred to or a reference is made to a wrong provision of law, that by itself does not vitiate the exercise of power so long as the power does exist and can be traced to a source available in law.’ (See N. Mani v. Sangeetha Theatre [(2004) 12 SCC 278], SCC p. 280, para 9.)

Thus, quoting of wrong provision of Section 20 in the order of discharge of the appellant by the competent authority does not take away the jurisdiction of the authority under Section 22 of the Army Act. Therefore, the order of discharge of the appellant from the army service cannot be vitiated on this sole ground as contended by the learned counsel for the appellant.”

In view of the above, this Court held that the point of maintainability raised by the defendant has no leg to stand and thus rejected.

As regard on merit of the application, the defendant inspite of several opportunities has not filed his affidavit. The documents relied by the plaintiff on the basis of which the plaintiff has filed the instant suit it reveals that on the demand of the defendant, the plaintiff has provided financial assistance of Rupees One Crore at the rate of 17% interest per annum and the correspondences made between the plaintiff and the defendant from time to time. The defendant had admitted that the defendant had availed financial assistance of Rupees One Crore from the plaintiff with interest. The documents executed by the defendant admit that the defendant had availed financial assistance with interest from the plaintiff and on the request of the defendant the time period for return of the said amount was extended. The defendant had also issued cheques to the plaintiff for realisation of the said amount but the cheques issued by the defendant were dishonoured. The defendant had paid interest on two occasions to the plaintiff and also return an amount of Rs. 25,00,000/- out of one crore. When the defendant had return the amount of Rs. 25,00,000/- on 9th August, 2018, the defendant vide e-mail dt. 9th August, 2018 assured the plaintiff that the balance amount will be paid on the following dates :

31.10.2018 ... Rs. 25 Lacs
 30.11.2018 ... Rs. 25 Lacs
 31.12.2018 ...Rs. 25 Lacs.

The defendant has not made payments to the plaintiff as per the dates mentioned above and vide e-mail dt. 10th December, 2018, the defendant has forwarded a revised plan to the plaintiff by informing that the defendant will pay the balance amount of Rs.75,00,000/- in four installment which are as follows :

31.01.2019 ..Rs. 10.Lacs
 28.02.2019 .. Rs.15 Lacs
 31.03.2019 ..Rs.25 Lacs
 30.04.2019 .. Rs.25 Lacs.

The defendant inspite of time fixed by himself had not paid the amount along with interest to the plaintiff and on 9th March, 2019 had again sent a mail to the plaintiff requesting the plaintiff for extension of time for payment till the month of March, 2019. On 7th January, 2019 the defendant had sent a mail informing the plaintiff that the defendant will clear the total liability by 31st March, 2019 and requested not to deposit cheques for encashment.

This Court had considered the documents issued by the defendant in favour of the plaintiff by admitting that the defendant had acknowledged the amount of Rupees One Crore with the promise to return the same with interest @17% per annum and by several documents the defendant had admitted that he will return the said amount but the defendant had return only an amount of Rs. 25,00,000/- and had paid interest only twice and no further interest is paid. There is no document to show that the defendant has repaid the amount with interest or the amount is not payable to the

plaintiff. There is nothing which the defendant has been able to demonstrate that there is any plausible defence to the unimpeachable claim of the plaintiff.

In view of the above, this Court passes decree on admission directing the defendant to pay Rs. 83,46,507/- to the plaintiff.

C.S. No. 133 of 2019 and **GA No. 2 of 2019 (Old G.A. No. 2406 of 2019)** are **disposed of**. Decree be drawn accordingly.

(Krishna Rao, J.)