ODC-33

IN THE HIGH COURT AT CALCUTTA
Ordinary Original Civil Jurisdiction
ORIGINAL SIDE

IA NO: GA/1/2022
CS/41/2022

KLG TRADEFIN PVT. LTD.
VS
ASHOKA HAWAI AND SHOES PVT. LTD.

BEFORE:
The Hon'ble JUSTICE RAVI KRISHAN KAPUR
Date : 4th May, 2022.

Appearance:
Mr. Rudraman Bhattacharya, Adv.
Mr. Lalit Baid, Adv.
Ms. Amrita Panja Moulick, Adv.
Mr. Satyaki Mukherjee, Adv.
...for the petitioner

Mr. VVV Sastry, Adv.
Mr. Debjyoti Saha, Adv.
...for the respondent

The Court:-

This suit is filed for recovery of money. The petitioner is engaged, inter alia, in the business of providing financial accommodation. It is alleged that the respondent was in dire need of funds and approached the petitioner for financial accommodation. Pursuant to negotiations, the petitioner advanced a sum of Rs.65 lakhs to the respondent. The funds were transferred from the petitioner's bank account maintained with the HDFC Bank, Stephen House Branch. It was also agreed between the parties that the aforesaid amount was repayable on demand alongwith interest at the rate of 12% per annum. Thereafter, on account of interest, the respondent made payment of Rs.1,37,650/- and various further payments on account of interest for the financial year 2020-2021. Subsequently, the respondent suddenly stopped making any payment either on account of principal or interest. The parties attempted to negotiate but they were unable to arrive at any settlement. Ultimately, by a notice dated 23 December, 2021 the petitioner was compelled to recall the entire loan amount alongwith accrued interest. By a reply dated 24 January, 2022 the respondent responded to the aforesaid demand. In such circumstances, it is now alleged that there is an aggregate sum of Rs.74,51,141/- which has become due and payable by the respondent to the petitioner both for principal and interest. Hence this suit.

Upon institution of this suit, the petitioner has filed this application seeking orders of restraint against the respondent from dealing with any of its assets as well as consequential directions on the respondent to make payment of the aforesaid amount due and payable by the respondent to the petitioner.

It is submitted on behalf of the respondent that, there are no pleadings under Order 38 Rule 5 of the Code of Civil Procedure, 1908 which warrant any orders being passed in the nature of attachment before judgment. It is further submitted that the petitioner is an unsecured creditor and is not entitled to any relief insofar as the assets of the respondent are concerned. The respondent also alleges that in view of the fraud perpetrated by the petitioner, the respondent has been compelled to file a criminal complaint.

I have considered the submissions made on behalf of the parties.

I find that, by a letter dated 24 January, 2022, the Advocates of the respondent have categorically stated that the entire transaction of providing

Rs.65 lakhs by way of a loan or financial accommodation by and between the petitioner and the respondent was a *book entry* and *jamma kharchi* transaction received only after an equivalent amount in cash had been made over by the respondent to the petitioner.

In my view this is a matter of serious concern and goes to the root of the genuineness of the entire transaction as pleaded by the petitioner. Accommodation entries or *jamma kharchi* transactions as they are commonly known are a commercial reality. The entire object of such transactions is to circulate ill gotten and unrecorded money with the resultant aim of attempting to launder one's money. Even under Section 68 of the Income Tax Act, 1961, any sum fund credited in the books of any person including loans received by such person can be examined by the Income Tax Department by verifying the identity, creditworthiness, nature, source and genuineness of the transactions [See Commissioner of Income Tax, Central-I vs. Maithan International (2015) 375 ITR 123 (Cal), Rajmandir Estates Private Limited vs. Principal Commissioner of Income Tax, Kolkata-III (2016) 386 ITR 162 (Cal) and Principal Commissioner of Income Tax (Central) – 1 vs. NRA Iron & Steel Pvt. Ltd. (2019) 412 ITR 161 (SC)].

The enforcement of contractual claims is in certain circumstances against public policy. Public policy imposes certain restrictions on the freedom of persons to contract. An ostensibly valid contract may be tainted by illegality. In some circumstances, the law prohibits the agreement itself. Illegality lies in the object which one or both parties have in mind or in the method of performance. Ordinarily, although all the other formalities for an agreement are complied with, an illegal agreement is *per se* unenforceable. One of the commonest types of illegal agreements are agreements to defraud the Revenue. Such transactions by their very nature are forbidden by law.

Suits for recovery of money lent and advanced are one of the oldest forms of action. However, there is an underlying premise to all such causes that the transaction be genuine in nature. In the instant case, the respondent alleges that the transaction by and between the parties was an *accommodation* entry or a *jamma kharchi* transaction. There is no agreement in writing entered upon by and between the parties. There are no post dated cheques. No other security has been offered by the respondent whatsoever. There is no other documentation by and between the parties. It is true that credit and not distrust is the basis of commercial dealings. However, the defence of the respondent that the parties to this suit have participated in an illegal transaction expressly forbidden by law cannot simply be brushed aside. Both in law and in equity, parties who participate in such transactions are not entitled to any assistance from any Court of Law. Accordingly, the defence raised by the respondent requires investigation.

In view of the aforesaid, I direct the Member (Investigation), Central Board of Direct Taxes to cause an investigation into the monetary dealings which form the subject matter of this suit by and between the petitioner and the respondent. The Advocate-on-Record on behalf of the respondent is directed to forthwith serve a copy of the plaint and all pleadings filed in this application (including the letter dated 24th January, 2022 issued by them), upon the Member (Investigation), Central Board of Direct Taxes. The Member (Investigation), Central Board of Direct Taxes may designate any responsible officer to carry out the aforesaid exercise. The Registrar, Original Side, High Court is also directed to forthwith serve a copy of this order on the Member (Investigation), Central Board of Direct Taxes as also the Chairman, Central Board of Direct Taxes. The Member (Investigation), Central Board of Direct Taxes or the designated officer is directed to file a Report on the returnable date.

It is clarified that the views expressed herein shall not influence the aforesaid statutory authorities from arriving at their own conclusion in accordance with law.

Let this matter appear for further hearing on 30th June, 2022.

(RAVI KRISHAN KAPUR, J.)

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