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

+ RSA 130/2009

KHEMRAJ SINGH

..... Appellant

Through: Mr. Gulshan Sharma, Adv. with
Mr. Sanjay Bharti, Adv.

versus

SMT KAMLESH KUMAR

..... Respondent

Through: Nemo.

CORAM:

HON'BLE MS. JUSTICE ARUNA SURESH

ORDER

22.10.2009

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RSA 130/2009 and CM APPL No.14771/2009 (stay)

Respondent filed a suit for recovery of Rs.75,000/- which according to her was loaned to the appellant seeing his financial hardship. The said amount was to be paid by the appellant in three installments of Rs.25,000/- each on 20.10.2002, 20.11.2002 and 20.12.2002. However, the appellant failed to return the money as agreed. The trial court, dismissed the suit of the respondent vide its judgment and decree dated 7.01.2008.

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The judgment and decree of the Civil Judge was challenged by the respondent in RCA No.21/2008. The appellate court disagreeing with the findings of the trial court reversed the judgment and decree of the trial court and allowed the appeal. Consequently, decree for Rs.75,000/- with pendent lite and future interest at the rate of 5% per annum from the date of filing of the suit till realization with costs was passed in favour of the respondent and against the appellant vide judgment dated 13.7.2009. The said judgment and decree of the appellate court has been impugned in this appeal.

Grievance of the appellant is that the findings of the first appellate court are perverse, though based on facts as it is not based on evidence available on record. The substantial questions of law are formulated in para three of the appeal.

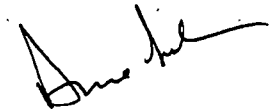
Respondent had filed a simple suit for recovery of money for recovery of loan advanced by her to the appellant. The only relevant document on record is Ex.PW1/1. As per this document appellant had agreed to pay Rs.75,000/- in three installments of Rs.25,000/- each to the respondents on 20.10.2002, 20.11.2002

and 20.12.2002 respectively. This is an admitted document on record.

Case of the respondent was decided on the basis of evidence adduced on the record and the judgment is purely based on fact findings. Appellate court also considered the evidence of the parties on record while deciding the appeal. The appellate court has laid emphasis on the document Ex.PW1/1, besides other evidence to conclude that, Rs.75,000/- were advanced by the respondent to the appellant. Once the execution of the document was admitted by the appellant, it was for him to rebut the presumption that this document was executed for repayment of money received by him. Observations and conclusions of the appellate court that the appellant failed to discharge the onus which heavily imposed upon him is a fact finding based on the evidence of the parties.

Under these circumstances, I conclude that findings of the appellate court based on the analysis of facts and evidence on record is not perverse, as alleged. Therefore, in my view, no substantial question of law arises in this appeal.

Hence, I find no merits in the appeal and the same is accordingly dismissed.



ARUNA SURESH, J.

OCTOBER 22, 2009
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