

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

% *Date of Judgment : 07th October, 2010.*

+ **RSA No. 170/2001**

OM PRAKASH Appellant

Through: Nemo

Versus

PREM JEWELLERS Respondent

Through: Nemo

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

INDERMEET KAUR, J.(Oral)

1. This second appeal has impugned the judgment and decree dated 10.04.2001 which had endorsed the finding of the Trial Judge dated 08.08.2000 thereby dismissing the suit of the plaintiff, Sh. Om Prakash.

2. Plaintiff had filed a suit for recovery of Rs. 38,4000/- against three defendants of which Rs. 20,000/- had been claimed as the principal amount. Rs. 14,400/- was the interest which was proved from 20.04.1993 to 19.04.1996 @ 24 % per annum; Rs. 4000/- had been claimed as notice charges. The case of the plaintiff was that he had advanced a loan of Rs. 20,000/- to defendant no.1 through defendant no. 2 and on the asking of defendant no. 3 vide cheque no. 202196 dated 20.04.1993 which was repayable with interest @ 24% per annum. Defendants utilized the amount for their business. The defendants failed to pay back the loan to the plaintiff. Hence, the present suit was filed.

3. Defendants denied the liability. It was stated that on 16.04.1993, plaintiff had taken a loan in cash of Rs. 20,000/- from defendant no. 3 on assurance of its payment within 2/3 days. The cheque for Rs. 20,000/- was given by the plaintiff on 20.04.1993; this was a blank bearer cheque given to the defendant no.3. Defendant no. 3 had a liability towards Sh. Anil Khattar; in consideration thereof he gave this bearer cheque of Rs. 20,000/- to his friend Sh. Anil Khattar. On the same day i.e. on 19.04.1993, Sh. Anil Khattar purchased one gold chain and a ring for a sum of Rs. 20,000/- from the shop of Defendant no. 2 (proprietor of Defendant no. 1, M/s. Prem Jewellers); Rs. 330.80/- which was in excess was paid by Sh. Anil Khattar for clearance of the said bill; the balance was paid by this cheque of Rs. 20,000/- .

4. The Trial Judge had framed five issue which interalia reads as follows:-

1. Whether the plaintiff advanced loan of Rs. 20,000/- to defendant no. 1 through defendant no. 2 at the instance of defendant no. 3? OPP.

2. Whether the plaintiff issued a cheque for Rs. 20,000/- in favour of defendant No. 3 who delivered the said cheque to Sh. Anil Khattar who in turn purchased gold chain and gold ring from defendant no. 2 for a sum of Rs. 20,330/- and paisa 80 and paid Rs. 330.80 in cash and the qheque for Rs. 20,000/- issued by plaintiff to defendant no. 3 against the said purchase? OPD.

3. To what amount, if any, the plaintiff is entitled? OPP.

4. Whether the plaintiff is entitled to interest? If so, at what rate and for which period? OPP.

5. Relief.

5. Two witnesses were examined on behalf of the plaintiff; cheque was proved as Ex. PW 1/1. Four witnesses had come into the witness box on behalf of the defendants; the ledger accounts of Sh. Anil Khattar were proved in the version of DW-1; they are Ex.

DW 1/3 and Ex. DW 1/4. DW- 2 had come into the witness box; he was defendant no.3. He had reiterated this averment on oath. Sh. Anil Khattar has come into witness box as DW-4.

6. The Trial Judge on the basis of this oral and documentary evidence held that the version of the defendants appears to be more natural and trustworthy. The case of the plaintiff was disbelieved. It was dismissed. The impugned judgment dated 10.04.2001 had endorsed this finding of the Trial Judge.

7. This is a second appeal. It was admitted on 30.04.2004. However, on the perusal of the record it is noted that after its admission, the substantial question of law has not yet been formulated. In the body of the appeal, the substantial questions of law have been formulated at page 3.

They interalia reads as follows:-

1. Whether the judgment/decree of the First Appellate Court is perverse in upholding the judgment/decree of Trial Court which is based on surmises and conjectures and is against the evidence on record?

2. Whether the judgment/decree of both First Appellate Court and Trial Court has been passed without applying the correct principle of law laid down by Hon'ble Court that "the onus of proving that the document was blank has to be discharged by the party who pleads that the documents was blank?

3. Whether both the First Appellate Court and Trial court had misdirected themselves by erroneously construing the cheque P.W. 1/1 and not drawing the correct legally inference?

4. Whether the judgments of the courts below are based on legal and valid evidence on record?

5. Whether the exhibit PW 1/1 is the conclusive proof of the consideration as proved by PW 1?

8. None has appeared to assist the court. This court is sitting in second appeal. It is not third fact finding court. It can reverse the

findings of fact only if the impugned evidence in the impugned judgment are perverse.

9. Perverse is defined as under:-

“Perverse- A perverse verdict may probably be defined as one that is not only against the weight of evidence but is altogether against the evidence.”

“A broad distinction has, therefore, to be maintained between the decisions which are perverse and those which are not. If a decision is arrived at on no evidence or evidence which is thoroughly unreliable and no reasonable person would act upon it, the order would be perverse. But if there is some evidence on record which is acceptable and which could be relied upon, howsoever compendious it may be, the conclusions would not be treated as perverse and the findings would not be interfered with.”

10. Both the courts below had given concurrent findings. The defence of the defendants has been substantiated in the version of four witnesses who had adduced oral evidence and the documentary evidence which comprises of DW 1/1 to DW 1/4.

11. Defendant no. 2, Sh. Ved Prakash, the proprietor of M/s Prem Jewellers has come into the witness box as DW-1. He had deposed that the cheque in question was given to him by Sh. Anil Khattar for the payment of his bill which was of Rs. 20,000/- which was raised by him for a purchase of a gold ring and a chain by Sh. Anil Khattar. The entries in his ledger book have been proved as Ex. DW 1/3 and DW 1/4. The defendant no. 3, Sh. Rajeshwar Sandhi, has come into the witness box as DW-2. He had deposed that on

16.04.1993, he had given a loan of Rs. 20,000/- to the plaintiff in cash which was returned by the plaintiff vide cheque in question i.e. the bearer cheque of Rs. 20,000/-; this was on 19.04.1993; cheque did not had any name or the endorsement on it. Sh. Anil Kumar has also come into the witness box. He was examined as DW-4. He deposed that Rajeshwar Sandhi (defendant no.3) had taken a loan of Rs. 20,000/- from him; on 19.04.1993. DW-4 approached defendant no. 3, Sh. Rajeshwar Sandhi , for money as he was in need of it; defendant no. 3 had given him a cheque of Rs. 20,000/-; on 19.04.1993 DW-4 had purchased one gold ring and one chain from the shop of Defendant no. 2 and in lieu of that payment, he had given that cheque to defendant no. 2 which was of Rs. 20,000/-; balance amount of Rs. 330.80/- was paid in cash.

12. Both the courts below had correctly appreciated the oral and the documentary evidence. In no manner can it be said that the evidence of the two courts below were perverse. It is clearly not the case as is apparent from the record that the impugned judgment had not taken into account the evidence adduced by the parties or it ignored or misread the documentary evidence. Hands of this court are tied; it cannot re-examine the facts.

13. The record and the body of the appeal as also the questions of law which had been formulated at page 3 of the body of the appeal raised no question of law much less any substantial question of law. It is also relevant to point out that in the memo of appeal, the questions of law have been framed as questions of law and not substantial questions of law; this court is precluded from examining the questions of law; it is only substantial question of

law which can be gone into by this court. No such substantial question of law having arisen, the appeal is dismissed.

INDERMEET KAUR, J.

OCTOBER 07, 2010

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