

IN THE HIGH COURT OF DELHI AT NEW DELHI

RFA No. 590/2005

Judgment delivered on: 05.08.2010

Late Sh. Ravi Arya

..... Appellant

Through: Mr.Sanjeev Kumar, Advocate.

Versus

Ms. Meenakshi

..... Respondents

Through: Mr.Raj Kapoor, Advocate.

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR,

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

KAILASH GAMBHIR, J. Oral:

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1. By the present appeal filed under Section 96 r/w Order 41 Rule 1 of the Civil Procedure Code, 1908, the appellant seeks to challenge the judgment and decree dated

29.04.2005 passed by the court of the Ld. Additional District Judge in Civil Suit No. 14/2003, thereby decreeing the suit in favour of the respondent.

2 . Brief facts of the case relevant for deciding the present appeal are that in the month of October 1999 the husband of the appellant Shri Ravi Arya (since deceased) approached the respondent for some financial requirements for his business purpose and since he was known to the respondent, she agreed to lend him a sum of Rs.2 lacs on the condition that he should return the same in the year 2000 at the earliest. In the repayment of the said loan amount the appellant issued a cheque bearing no.54368 dated 25.2.2000, drawn on Corporation Bank, Tilak Nagar Branch, New Delhi for a sum of Rs.2 lacs but the said cheque was dishonoured by the bank on account of insufficient funds. On approaching the husband of the appellant by the respondent he promised to refund the same but he never refunded the said amount. Thereafter, the respondent served a demand notice dated 7.9.2002 but the husband of the appellant failed to make

payment of the loan amount and therefore the respondent filed a suit bearing no.14/2003 under Order 37 CPC before the trial court for recovery of the loan along with interest and vide order judgment dated 29.4.2005, the suit was decreed in favour of the respondent and against the appellant. Assailing the said judgment, the appellant has preferred the present appeal.

3. The short question raised by the appellant in the present appeal is that the Id. Trial court failed to appreciate the fact that the respondent failed to prove the existence of any written or oral loan agreement between the appellant and the respondent for the advancement of loan amount of Rs.2,00,000/- in lieu of which the alleged cheque was issued by the deceased husband of the appellant. The contention of the counsel for the petitioner is that a specific issue was framed by the Id. Trial court with regard to the advancement of the said loan amount of Rs.2,00,000/- and onus of the said issue was laid on the respondent/plaintiff therein but no evidence was adduced by the respondent on the said issue but still the Id. Trial court decided the said issue in favour of the respondent.

4. I have heard learned counsel for both the parties.

5. The learned Trial court has decided the issue Nos. 3,4,5 & 6 together. For better appreciation of the controversy the same are reproduced as under:-

- iii) Whether the plaintiff has advanced a loan of Rs.2 lakhs as claimed in para No.1 of the plaint to the defendant? OPP.
- iv) Whether the defendant had issued cheque No. 543468 dated 25.02.2000 for Rs.2 lakhs drawn on Corporation Bank, Tilak Nagar Branch, New Delhi towards repayment of the alleged loan amount in favour of the plaintiff? OPP.
- v) Whether the plaintiff is entitled to recover the suit amount? OPP.
- vi) Whether the plaintiff is entitled to recover interest, if so, at what rate and to what amount?

6. The onus to prove all these issues was laid on the respondent and since all the issues were interconnected so based on the evidence led by the parties the trial court chose to decide these issues together. It is an admitted case between the parties that the respondent was not engaged in the business of money lending. The respondent in her deposition clearly stated that the husband of the appellant was well known to her and he had approached the respondent for the advancement of said loan amount of Rs.2,00,000/- because

of some dire need and the said amount was advanced by the respondent to the deceased husband of the appellant on the condition that he shall return the same in the year 2000 at the earliest. It is further the case of the respondent that in consideration of the said loan amount the husband of the appellant had issued the cheque in question for a sum of Rs.2,00,000/- dated 25.02.2000 drawn on Corporation Bank, Tilak Nagar Branch, New Delhi. Before filing the said suit, the respondent had also sent a legal notice dated 7.9.2002 through registered AD and also through courier.

7. On the other hand, the defence of the appellant has been that her husband had never approached the respondent for any such financial requirement. The appellant also denied issuance of any such cheque in favour of the respondent. It was also alleged by the appellant that the alleged cheque presented by the respondent was forged and fabricated by her with unlawful intention and ulterior motives to squeeze money out of him. In the cross-examination of the respondent, the

appellant for the first time introduced a new theory by suggesting to the witness that the said signed cheque was misplaced from the office of her husband along with two other cheques. It also came in evidence that no such information was given by the husband of the appellant to the Bank regarding the missing of signed blank cheques or any complaint lodged by him to the police reporting missing of such signed cheques. The appellant also did not give any evidence to show as to when the said cheques were signed by the husband of the appellant and when the same were lost. It is a settled legal position that the presumption is in favour of the holder of the cheque and such a presumption becomes very strong when the signatory does not dispute his signatures on the dishonoured cheque. A perusal of the evidence led by both the parties clearly shows that the respondent was successful in proving the fact that the cheque in question was handed over to her by the husband of the appellant and the same returned dishonoured on its presentation by the respondent with her bank due to insufficiency of funds. The

respondent has also proved due service of legal notice upon the husband of the appellant through courier. So far as the advancement of loan amount is concerned, there is an oral testimony on both sides. But considering the fact that the appellant failed to give any explanation, much less a plausible one, as to how and under what circumstances the cheque for the said amount of Rs.2,00,000/- was issued by him to the respondent, therefore the contention that it was for the discharge of a debt taken by the husband of the appellant holds much ground. In the written statement filed by the husband of the appellant the stand taken by him was that the cheque was forged and fabricated by the respondent and in the evidence the appellant introduced the theory of missing of the said signed cheque along with two other cheques. Clearly the said theory was introduced by the appellant as an afterthought after finding it difficult to offer any explanation for the issuance of the said cheque in favour of the respondent. The theory of advancement of loan by the respondent gets strengthened due to the issuance of the cheque by the husband of the appellant

and for which no explanation came forth from the appellant or her husband. Therefore looking into the totality of the circumstances and the facts proved on record, the findings of the Id. Trial court on the said issues under no circumstance can be termed as perverse or illegal.

8. Hence, in the light of the aforesaid discussion, there is no merit in the present appeal and the same is hereby dismissed.

August 05, 2010
pkv/mg

KAILASH GAMBHIR, J