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IN THE HIGH COURT OF DELHI AT NEW DELHI

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RFA No.380/2001 & RFA No.381/2001

21st February, 2011

1. RFA No.380/2001

BHIM SINGH

..... Appellant

Through: Ashok Sapra, Adv.

VERSUS

KAILASH CHAND

..... Respondents

Through: None

&

2. RFA No.381/2001

BHIM SINGH

..... Appellant

Through: Ashok Sapra, Adv.

VERSUS

KAILASH CHAND

..... Respondents

Through: None

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

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

VALMIKI J. MEHTA, J (ORAL)

1. The challenge by means of these two Regular First Appeals under Section 96 of the Code of Civil Procedure, 1908 is to the impugned judgment and decree dated 21st March, 2001 whereby the two suits filed by the appellant/plaintiff against the respondent/defendant were dismissed. First suit was suit No.992 of 1995, which was for rendition of

accounts and dissolution of partnership and the second suit was suit No.993 of 1995 for recovery of Rs.78,000/- for an alleged loan of Rs.57,000/- given by the appellant/plaintiff to the respondent/defendant. Both the suits were consolidated vide order dated 6.11.1990 and the evidence recorded in Suit No.993/95 was also taken as evidence in Suit No.992/95.

2. The case of the appellant/plaintiff in the suit for dissolution of partnership and rendition of account was based upon the case that he had purchased a truck bearing registered No.DHL 4690 after taking loan from M/s. Raksons Pvt. Finance Ltd. and a partnership was entered into between the parties on 29.11.1980. It was alleged that the defendant took the signatures of the appellant/plaintiff on certain blank documents and on which subsequently a partnership deed and a dissolution deed was got typed, and which documents are forged documents. In the suit 993/1995 it was alleged that the appellant/plaintiff had given a loan of Rs.57,000/- to the defendant and which was to carry interest @ 1%, and on the failure of the respondent/defendant to return such amount, the suit was filed.

3. The respondent/defendant took up a stand that the partnership deed between the parties was not the one dated 29.11.1980 which document was merely a draft and the partnership deed between the parties was in fact dated 25.3.1981 and which was subsequently dissolved vide dissolution deed dated 22.8.1982.

4. It was further stated by the respondent/defendant that on the rendition of account, in fact a sum of Rs.56,449.31 was payable and therefore the amount paid of Rs.57,000/- was not towards an alleged loan but with respect to the clearing of the dues on the dissolution of the partnership.

5. The partnership deed of the appellant/plaintiff dated 29.11.1980 was exhibited as Ex.PW1/6 in the Trial court and the partnership deed and the dissolution deed dated 25.3.1981 and 22.8.1982 filed by the respondent/defendant were exhibited in the Trial Court as Ex. DX and Ex.DY. Trial Court has arrived at a finding of the fact that the partnership deed between the parties was not Ex.PW1/6 but Ex.DX and the Trial Court has further arrived at a finding of the fact that when the amount of Rs.57,000/- was given by the appellant/plaintiff to the respondent/defendant the same was not a loan but towards the amount payable as per settlement of the accounts of the dissolved partnership firm.

6. The Trial Court has held that the partnership deed between the parties is the document, Ex.DX dated 25.3.1981 inasmuch as in the two notices dated 8.9.1982 and 20.9.1982 (Ex.D9 and Ex.P6 respectively) sent by the appellant/plaintiff himself reference was made by the appellant/plaintiff only to the partnership deed dated 25.3.1981 and there was no whisper about the partnership deed dated 29.11.1980 (Ex.PW1/6) in these two notices. The Trial Court has also arrived at a finding of the fact that since the appellant/plaintiff was the Managing Partner of the

business, consequently there was no question of giving blank papers to the respondent/defendant who was a sleeping partner. The Trial Court has held that the partnership deed and the dissolution deed, Exs.DX and DY are not forged documents and has referred to Ex.D5, a letter dated 12.2.1983 sent by the appellant himself to the respondent whereunder the appellant sent a final payment of Rs.5,000/- to the respondent and asked the respondent to give a full and final payment receipt. The Trial Court has held that if the amount which was given through this letter, Ex.D5, was a part of a loan, then there was no question of asking full and final payment receipt by the letter Ex.D5, and which was thus a clear cut indication of payment towards the settlement of the account between the parties. Some of the relevant paragraphs of the impugned judgment and decree are paras 29, 31, 32, 41, 42 and 43 which read as under:-

29. The first notice sent by the plaintiff to the defendant is dt. 08.9.1982. From the perusal of the said notice it becomes crystal clear that plaintiff has based his claim on the partnership deed dt. 25.3.1981 i.e. Ex.DX. From the reading the said notice it also becomes clear that the said notice was regarding the accounts of the business of truck No.DHL-4690. The photo copy of the same has been proved as Ex.D9 which has been admitted by the plaintiff.

31. Another photo copy of the notice i.e. the second notice sent by the plaintiff to the defendant is proved Ex.P6 by the defendant. This notice is dt. 20.9.1982. In this notice a reference had been made of the earlier notice dt. 08.9.1982. From the perusal of this notice it is revealed that the plaintiff has again based his claim on the partnership deed dt. 25.3.1981. There is not a a whisper about the partnership deed dt. 29.11.1980 in the aforesaid two notices dt. 08.9.1982 and 20.9.1982.

32. Admittedly the case of the plaintiff and defendant both, is that defendant was a sleeping partner while

plaintiff being an active partner was given the responsibility of plying and operating the truck. In these circumstances there was no occasion for the plaintiff to hand over signed blank paper to the defendant. It has come in the evidence that the plaintiff was operating the truck from Delhi and used to keep accounts. So in this situation it was not plausible that the plaintiff would have handed over his signed blank papers to the defendant. Rather in such a situation the sleeping partner may hand over the signed blank paper to the active partner.

41. Counsel for the plaintiff pointed out that the distance between Delhi and Rajkot is about 1400 Kms. It was not feasible for the plaintiff to pay Rs.20,000/- on 27.12.1982 and again go to Rajkot for paying Rs.25,000/- after four days i.e. 1.1.1983. He further pointed out that the receipts of Rs.20,000/- and Rs.25,000/- proved by the defendant do not bear the signatures of the plaintiff. On the other hand counsel for the defendant Shri D.P.Bhatia pointed out that PW3 being driver of the plaintiff is intentionally favouring the plaintiff by saying that the cash amount of Rs.45,000/- was given by the plaintiff to the defendant in his presence. He pointed out that the dissolution deed Ex.DY is dt. 22.8.1982. It indicates that on 22.8.1982 the accounts between the parties were settled to the effect that the plaintiff is to pay Rs.56,449.31 P to the defendant. Thereafter the plaintiff paid an amount of Rs.20,000/- on 27.12.1982 and an amount of Rs.25,000/- on 1.1.1983. The plaintiff then again sent a draft of Rs.7,000/- on 15.1.1983 and for Rs.5,000/- on 10.2.1983. The draft of Rs. 5,000/- was sent vide letter Ex.D5 wherein the plaintiff has categorically written that defendant should prepare a receipt for "full and final payment" after fixing the revenue stamp and send the same to the plaintiff. Counsel for the defendant pointed out that this payment of Rs.5,000/- was the last instalment of the total amount of Rs.57,000/- or so which was to be paid by the defendant to the plaintiff. He further pointed out that this plea is taken by the defendant in his written statement and he has also deposed in the Court that the amount of Rs.57,000/- have been received by the defendant.

42. I have given my considered thought to the arguments of the counsel for the parties. The total amount of Rs.57,000/- was paid by the plaintiff to the defendant in four instalments of Rs.20,000/-, Rs.25,000/-,

Rs.7,000/- and Rs.5,000/- respectively. All these four instalments were paid after 22.8.1982. i.e. the date of execution of the dissolution deed. PW3 the driver of the plaintiff nowhere mentions that said amount of Rs.45,000/- was advanced by the plaintiff to the defendant as a loan.

43. The plaintiff has admitted that the letter Ex.D3 and D5 have been written by him and addressed to the defendant. In Ex.D3 it is mentioned that the plaintiff was sending a draft of Rs.7,000/-. In Ex.D5 it is mentioned that the plaintiff is sending a draft of Rs.5,000/-. Vide this letter the plaintiff has demanded a receipt with a revenue stamp regarding the "full and final payment" of the accounts clearly reveals that the accounts between the parties had been settled and also that the said payment of Rs.5,000/- was the last instalment of the amount which was to be paid by the plaintiff to the defendant."(Emphasis added)

7. I completely agree with the findings and conclusions of the Trial Court, including those given in the paragraphs reproduced above. A Civil Case is decided on balance of probabilities, and this Court is not entitled to interfere with the findings and conclusions of the Trial Court merely because the Trial Court has accepted one possible view and this Court is of another possible view, as long as the findings and conclusions of the Trial Court are not illegal and perverse. I do not find any illegality and perversity in the impugned judgment and decree which calls for interference by this court in the appeals.

8. The appeals being devoid of merits are therefore dismissed leaving the parties to bear their own costs.

FEBRUARY 21, 2011

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VALMIKI J. MEHTA, J.