

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

+ **RFA No.28/2001 & RFA No.45/2001**

% 31<sup>st</sup> January, 2011

**1. RFA No.28/2001**

**TILAK RAJ**

..... Appellant  
Through: None

VERSUS

**RAMAN KHANNA**

..... Respondent  
Through: None.

**&**

**2. RFA No.45/2001**

**TILAK RAJ**

..... Appellant  
Through: None

VERSUS

**VIJAY VINOD SEHGAL**

..... Respondent  
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. This matter is on Regular Board of this court since 3<sup>rd</sup> January,

2011. Today, it is an effective item no.6 on the Regular Board. It is 2.45 pm. No one appears for the appellant. I have therefore perused the record and am proceeding to dispose of the appeal.

2. The challenge by means of these two appeals is to the two impugned judgments and decrees, both dated 13.9.2000, whereby the suits of the appellants/plaintiffs for recovery were dismissed. Both the impugned judgments are almost identical and the facts are also nearly identical. For the sake of convenience, the appeals are therefore disposed by this common judgment. Reference is made for convenience to facts of RFA No.28/2001.

3. The appellant/plaintiff filed the suit of recovery of Rs.36,530/- against the respondent on the ground that he gave a loan of Rs.26,000/- to the defendant carrying interest at 18% per annum, which the respondent/defendant failed to repay, resulting in the filing of the suit. The respondent/defendant contested the suit and stated that the money which was received by the defendant was received not from the appellant but from his son Inder Mohan Puri. It was stated that the bank draft of Rs.26,000/- was received by the respondent on account of sale of a plot belonging to Smt. Shashi Bala Khanna, wife of the defendant and which plot was situated at Jagdamba Colony, Shahdara.

4. The Trial Court has dismissed the suit on the ground that it has been found as a fact that the bank draft was prepared from the bank account of Sh.Inder Mohan Puri and that it was not proved that the appellant/plaintiff made any payment to Inder Mohan Puri for any further

payment to respondent/defendant. It was therefore held that Sh. Inder Mohan Puri was the only person who was entitled to file the suit for recovery. The relevant portion of the impugned judgment is contained in paras 13 to 15, which read as under:-

“13. Onus to prove this issue was on the plaintiff in discharge of which he has examined himself as PW-1 and PW-2 Madan Lal Garg. PW-1 Tilak Raj no doubt stated in his statement that the amount of Rs.26,000/- was paid by him to the defendant by a bank draft bearing no. 597008 dated 13.3.89 prepared at Oriental Bank of Commerce, Roshanara Road, Delhi.

14. PW-2 Madan Lal Garg, Special Assistant of the said bank had brought the original record and said that one Inder Mohan Puri got one draft of Rs.26,000/- prepared from his branch on 13.2.1989 in favour of the defendant Raman Khanna and the said bank draft was bearing no.597008 and proved the photo copy thereof as Ex.PW-2/1. In view of this statement being almost unchallenged on cross-examination, I find that it was Inder Mohan Puri who got the said bank draft prepared in the bank and the person who got bank draft prepared in the bank had paid the said amount. Therefore by the testimony of PW-2 it was Inder Mohan Puri, who paid the amount of Rs.26,000/- to the bank. There is no evidence on record either from statements PW-1 or PW-2 or Inder Mohan Puri who could not be produced and examined, that the said amount was paid by Tilak Raj on that date to Inder Mohan Puri. Therefore in the absence of any statement being on record that the plaintiff Tilak Raj had paid the said amount to Inder Mohan Puri who was directed to get the bank draft prepared, I find that the plaintiff bitterly failed to prove the fact that he made the payment of Rs.26,000/- to the bank for preparing the said bank draft and in those circumstances it has been proved that Inder Mohan Puri paid the said amount for the said draft. Accordingly, payment has been proved by the testimonies of these witnesses in the name of Inder Mohan Puri since he had applied in the bank for preparing the draft and paid the amount in that regard.

15. There is no evidence on record from the statement of Tialk Raj that he had handed over the cash of Rs.26,000/- to Inder Mohan Puri on any date or on 13.2.89 to get the bank draft prepared. Therefore, I find that the plaintiff bitterly failed to prove the payment to the defendant in his own name. Once the payment has been proved by the said bank draft and the said bank draft has been got prepared by Inder Mohan Puri, I find that it was Inder Mohan Puri who paid the said amount to the defendant. That being so, I find that the plaintiff bitterly failed to prove the payment of the loan of Rs.26,000/- to the defendant in his own name. That being so, I find that the is not entitled to recover the said amount, unless the suit was filed in the name of Inder Mohan Puri or suit was filed by Tilak Raj himself as attorney of Inder Mohan Puri. Inder Mohan Puri was alive when the suit was filed. Therefore, it was Inder Mohan Puri who could file the suit against the defendant to recover the said amount and plaintiff Tilak Raj was having no right, title or interest to file the suit against the defendant to recover the said amount. Accordingly, I find that the plaintiff bitterly failed to prove his entitlement to recover any amount from the defendant. So this issue stands decided in favour of the defendant and against the plaintiff. “

5. I do not find any illegality and perversity in the aforesaid findings and conclusions of the Trial court. The appellant has admitted in his cross-examination that he did not have any agreement or pro-note evidencing the factum of granting of loan by him to the respondent/defendant. Admittedly, the monies were paid not by the appellant/plaintiff to the respondent/defendant but by Sh. Inder Mohan Puri, the son of the appellant by means of a bank draft prepared from the bank account of Inder Mohan Puri. Inder Mohan Puri was not arrayed as a plaintiff in the suit. He also did not come into the witness box to depose in favour of his father/appellant/plaintiff. The Trial Court has therefore rightly held that the

suit was liable to be dismissed.

6. This Court is not entitled to interfere in appeal merely because two views are possible, unless the view taken by the Trial court is perverse or leads to gross injustice. I do not find any of these elements exists for upsetting the impugned judgment and decree. The appeal is therefore dismissed leaving the parties to bear their own costs. The Trial Court Record be sent back.

**JANUARY 31, 2011**

ak

**VALMIKI J. MEHTA, J.**

**RFA No.45/2001**

1. The matter is on Regular Board of this court since 3<sup>rd</sup> January, 2011. Today, it is an effective item no.7 on the Regular Board. It is 2.45 pm. No one appears for the appellant. I have therefore perused the record and am proceeding to dispose of the appeal.

2. The only difference between the facts of this appeal and the facts of RFA No.28/2001 is that in the present case, the loan was said to be of Rs.40,000/-. The suit for recovery was for Rs.56,800/-. The respondent/defendant additionally contended in this suit in his written statement that Inder Mohan puri had received the amount of Rs.40,000/- by bank draft and Rs.49,000/- in cash , i.e. Rs.89,000/- in total. The Trial Court has on the same grounds as dealt with in RFA No.28/2001, and which equally

apply in the present appeal, dismissed the suit for recovery. This appeal is therefore misconceived and is accordingly dismissed leaving the parties to bear their own costs. The Trial Court Record be sent back.

**JANUARY 31, 2011**

ak

**VALMIKI J. MEHTA, J.**