

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

+ **RFA No.546/2001**

% **4th March, 2011**

BALBIR SINGH Appellant
Through: None.

VERSUS

PRIT PAL SINGH 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 case is on the 'Regular Board' of this Court since 17.1.2011. Today, it is effective item No.6 and though it is 12.30 P.M. nobody has chosen to appear for the parties. I have, therefore, perused the record and am proceeding to dispose of the appeal.

2. The challenge by means of this Regular First Appeal under Section 96 of the Code of Civil Procedure, 1908 (CPC) is to the impugned judgment and decree dated 20.7.2001 whereby the suit of the appellant/plaintiff for recovery of Rs.1,19,460/- was dismissed.

3. The appellant/plaintiff claimed to have given the respondent/defendant various loans of different amounts of Rs.3,000/-, Rs.21,000/- etc. from May, 1997 to December, 1997 totaling to Rs.75,000/-. It was claimed that interest was payable @ 2% per month on the amount lent. The parties are real brothers. The plaintiff filed the suit for recovery because he claimed that the loan amount was not repaid with interest. The respondent/defendant contested the suit and stated that parties not only had business dealing, in fact the appellant/plaintiff used the method of giving cheques for converting his white money into black money. It was pleaded that all the amounts which were paid by means of cheques totaling to Rs.75,000/- were in fact taken back by the appellant/plaintiff through his son and father, and in whose favour cheques were issued by the defendant/respondent from his account.

4. The defendant was asked to lead evidence first and he proved various cheques issued from his account in favour of Gunjit Singh Bakshi-son of the plaintiff, thus showing the repayment of the amounts which were credited in his account by means of cheques issued by the plaintiff, and amounts which the plaintiff claimed falsely as a loan. The trial Court has, in this regard, referred to the various exhibited cheques in favour of Gunjit Singh Bakshi in para 6 which reads as under:-

“6. Defendant was asked to lead the evidence first as he has taken the plea of payment of amount claimed by the plaintiff. He examined DW-1 R.P.Singh, Clerk, Canara Bank who produced the statement of account of Gunjit Singh

Bakshi for the period 1/5/97 to 31/5/97, the same is Ex.DW1/1. As per the account a sum of Rs.21,000/- was transferred from Saving Bank account No.23879 of this branch on 20/5/97 and was credited to this account. The relevant entry has been shown at point Mark X. He had also brought the original cheque No.876821 dt. 16/5/97 drawn on Canara Bank, Pritam Pura in favour of Gunjit Singh Baxi certified copy of which is Ex.DW1/2 and certified copy of pay-in-slip is Ex. DW1/3. He had also brought the copies of statement of account pertaining to SB A/c No. 23879 of Sh. Prit Pal Singh Baxi in the branch from 1/5/97 to 31/12/97 and the same is Ex.Dw1/4. He have brought the true copy of cheque No.876823 dt. 25/6/97 for Rs.20000/- favouring self presented in their branch by Gunjit Singh and the amount was paid to him, his signature are appearing on the reverse side of the certified copy of cheque Ex.DW1/6. Similarly amount of Rs.3000/- was withdrawn by Gunjit Singh from their branch through cheque copy of which is Ex.DW1/7. Another amount of Rs.6000/- was withdrawn by Gunjit Singh through cheque certified copy of which is Ex.DW1/8.”

5. The trial court after discussing the evidence of both the parties has arrived at a finding of fact that whatsoever amounts were lent by the appellant/plaintiff to the defendant were repaid back to him because with respect to each credit in his account of a cheque of the appellant/plaintiff there was a corresponding withdrawal from this account through either the son Gunjit Singh Bakshi or through the father of the appellant/plaintiff and the writing on such cheques was in the handwriting of the appellant/plaintiff. The relevant para, in this regard, of the impugned judgment, is para 18 which reads as under:-

“18. Counsel for the defendant has drawn the attention of this court to the cheque Ex.PW1/1 to Ex.PW1/9 and stated that all these cheques have been signed by Balbir Singh for Inter-national Traders and Engineers as partners and not as proprietors. The story of the plaintiff is that he had advanced the loan in his

personal capacity and he is the sole proprietor of M/s International Traders and Engineers is belied in the absence of any loan agreement and the nonproduction of the Account books of the partnership firm. Plaintiff could not prove on balance of probabilities that these cheques were given by the plaintiff to the defendant on account of loan. His plea is that these cheques were given by the plaintiff on the one hand and on the other hand the blank cheques were received from him were encashed by the plaintiff which is clear from his statement of account as well as the cheques Ex.DW1/2, DW1/5, DW1/6, DW1/7 and DW1/8 and as per his statement of account Ex.PW1/10 of the defendant it is clear that against every amount it is deposited in his account there is corresponding withdrawals from his account. Withdrawals are by the plaintiff through his son or through his father and the writing of the cheques Ex.DW1/3 is in the handwriting of the plaintiff and is signed by the plaintiff at point A. These accounts were mutually settled and the amount of cheque Ex.DW1/2, DW1/5, DW1/6, DW1/7 and DW1/8 were kept by the plaintiff. As per the bank record also M/s International Traders and Engineers were consisting two partners Balbir Singh and Prit Pal Singh. Later on, which was converted into overdraft account and the number is 10968 from 21/10/2000. Though PW-3 Sardar Sohan Singh stated that he entered into oral partnership with the plaintiff and the partnership concern was M/s. International Traders and Engineers and the partnership came to an end in 1997. This fact was also belied by the statement of the Banker and witness from Canara Bank. In the statement of PW-2 he has clearly stated that as per their record there is still a partnership firm consisting of Balbir Singh and Sardar Sohan Singh Bakshi. Hence, on the basis of the pleadings and material placed on record and in the absence of any agreement in writing or account books of partnership firm in the name of which the cheques Ex.PW1/1 to Ex.PW1/10 were issued by Balbir Singh, plaintiff, as partner the contention of the plaintiff that he had issued the cheques as he was a proprietor of M/s. International Traders and Engineers has not been proved and rather has been contradicted by his own documents proved on record by him. In his cross examination could not stated that whether he has filed his income tax return for the year 1997, 1998, 1998-99 and 1999-2000 as partnership firm or as proprietorship firm. The contention of the defendant on the contrary is proved

on record by the issuance of various cheques which were withdrawn either by the plaintiff, his son on his father from the account of the defendant, specially when the statement of the father of the parties as PW-3 has come that for the last 2-3 years he has not visited the house of defendant and corresponding enterance in the account book of Canara Bank in the account of Prit Pal Singh Ex.DW1/10 clearly shows that against the deposit of entry by the plaintiff there is ... withdrawn in the account by cash either by the son of plaintiff or his father or by the plaintiff himself.”(underlining added)

6. I completely agree with the findings and conclusions of the trial Court. In any case, merely because two views are possible, this Court will not interfere with one plausible view which is taken by the trial Court unless the said view is illegal, perverse or causes grave prejudice/injustice. I do not find any illegality or perversity in the impugned judgment and decree or any injustice having been caused to the appellant/plaintiff which requires interference by this Court. The appeal, therefore, being devoid of merit is dismissed, leaving the parties to bear their own costs. Trial Court record be sent back.

March 04, 2011
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VALMIKI J. MEHTA, J.