

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

+ **RFA Nos.533/2001 & 619/2001**

% **3<sup>rd</sup> March, 2011**

**RFA No.533/2001**

Jitender Kumar ..... Appellant

Through: None.

VERSUS

M/s Goel Estate Finance & Ors ..... Respondents

Through: None.

**RFA No.619/2001**

Balbir Singh ..... Appellant

Through: None.

VERSUS

M/s Goel Estate Finance & Ors ..... 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. These cases are on the Regular Board of this Court since 17.1.2011. Today these are effective item no. 5 on the Regular Board. It is 12:25 pm but no one appears for the parties. I have therefore perused the respective records and am proceeding to dispose of the appeals.

2. By means of these two regular first appeals under Section 96 of the Code of Civil Procedure, 1908 challenge is laid to the impugned judgment and decree dated 12.7.2001 passed by the trial court whereby the suit of the respondent no.1/plaintiff was decreed for recovery of Rs.1,37,280/- along with the interest at the rate of 12% p.a., as the appellants failed to repay the loan which was granted to Sh. Jitender Kumar, the appellant in RFA 533/2001. With respect to the loan, guarantees were executed by one Romesh and Sh. Balbir Singh, the appellant in RFA 619/2001. The appeals arising from one judgment and decree are therefore being disposed of by this common judgment.

3 The case of the respondent no.1/plaintiff in the trial court was that it was engaged in finance business and the appellant/defendant no.1 required finance to purchase a vehicle HNR-2244. Loan of Rs.1 lac was given to the appellant/defendant no.1 and in consideration of which, defendants executed the agreement dated 6.4.1994 and also executed the promissory note for Rs.1,38,000/-. The loan of Rs.1 lac was repayable in 23 equal installments of Rs.6000/- each over a period of two years ending on 4.5.1996. Appellant /defendant no.1 paid five installments but failed to pay other installments

claiming that the vehicle had got burnt and he was pursuing his claim with the Insurance Company. It transpired that the Insurance Company rejected the claim of appellant/ defendant no.1 on the ground that the driver did not carry a valid driving licence at the time of the incident. On account of the default of the defendants to repay the loan, defendant no.1 being the principal borrower and the defendants no.2 and 3 being the guarantors, the subject suit came to be filed. The suit was originally filed as under Order 37 CPC but subsequently it was treated as an ordinary suit.

4 The suit was contested with the defendant nos.1 and 3 filing a joint written statement and the other guarantor/defendant no.2 Sh. Balbir Singh, appellant in RFA 619/2001, filing a separate written statement. In the written statement filed by the defendants no.1 and 3, it was claimed that there was no registered partnership firm of the respondent no.1/plaintiff and that the suit was not maintainable because there was an arbitration clause. Defendant no.2 Sh. Balbir Singh, appellant in RFA 619/2001 pleaded that he signed the document only as a witness and not as a guarantor.

5 The trial court, after pleadings were completed, framed the following issues:

- “1. Whether the plaintiff is a registered partnership firm and suit has been filed by a competent person? OPP
2. Whether the suit is barred by limitation? OPD
3. What is the effect of arbitration clause in the agreement? OPD

4. Whether this court has no pecuniary jurisdiction as alleged by defendant No.1? OPP/D1.
5. To what amount the plaintiff is entitled? OPP
6. Whether the plaintiff is entitled to interest, if so, at what rate and on what amount? OPP
7. Relief.”

6 On the issue no.1, the trial court has held that the respondent no.1 was a registered partnership concern by referring to the certificate of registration Ex.PW1/1 and the certified copy of form A Ex.PW1/2. This issue has been correctly decided by the trial court.

7 The second issue was whether the suit was barred by limitation. In this regard, the trial court has held that with respect to the installment, the same fell due monthly and those installments which were due within three years within the date of filing of the suit, were within the period of limitation, and the suit was accordingly decreed for such installments, and for which, the relief was prayed. The trial court had rightly referred to Article 36 of the Limitation Act. I have also referred to the agreement between the parties exhibited as Ex.PW1/3 and in terms of this agreement, the case clearly falls under Article 36, inasmuch as there is no automatic termination of the agreement and no notice of termination of agreement was ever served by the respondent no.1. Even if, the agreement was to be automatically terminated for non-payment, surely, it was a right which the respondent company could have waived so as to continue with the agreement. The trial court has therefore rightly held the suit to be within limitation The trial court

has also rejected the stand of the appellant that no amount was received because it was proved that the appellant/ defendant no.1 purchased an old truck which was financed with another financier and therefore a sum of Rs.82,000/- was paid by the respondent no.1 to the previous financier and a sum of Rs.18,000/- was paid to the previous owner of the vehicle.

8 With respect to the defence of the defendant no.2, the appellant in RFA 619.2001, the trial court has held that plea of the said defendant no.2/appellant could not be believed that the documents at the time of his signing them were blank and he signed only as a witness. I note that signatures of the appellant/defendant no.2 Balbir Singh appeared at the place of the guarantor and not at the place of the witness. The trial court has held that there was no reason why the appellant Balbir Singh should not be held liable because there is no ill will alleged against the respondent no.1. In this regard, the trial court has rightly given the following findings and conclusions in para 27, and which I agree with:-

“27. It is the case of the plaintiff that defendant no.2 and 3 stood as guarantors. In this regard, it may be mentioned that defendant no.2 has nowhere disputed that he signed the agreement Ex.PW1/3. His only plea is that he never stood a guarantor, he was called by Sh.P.K. Goel and was told that Sh. Jitender Kumar Singh was taking a loan from him and that he should sign the documents as a witness. According to him, he knows only Urdu language and does not know what was written on those documents. The contents of the documents were not even read over to him. No demand notice was served upon him. Here, it may be mentioned that it has come in cross-examination of plaintiff that all the three defendants were present when the contents were explained to the guarantors and at that time,

witness Sh. Ishwar Singh Lakhra was also present. He categorically denied the suggestion that signatures of defendant No.2 were obtained on blank agreement and on pronote or that defendant no.2 signed the documents as witness and not as a guarantor. It is pertinent to note that defendant no.3 has nowhere objected to the execution of the agreement or that he stood as a guarantor. He has never taken the plea that documents were blank when he signed the same. Under these peculiar circumstances, it was incumbent upon defendant No.2 to have proved that the documents were blank or that he was never informed about the contents of the documents or that he never stood as a guarantor. No illwill has been alleged by him against the plaintiff for which reasons, plaintiff could fraudulently obtained his signatures on the agreement as guarantor. Rather, it has come in his cross-examination that plaintiff was known to him for the last 25 years and during this period, prior to this case, he was never called by the plaintiff to sign any document. Therefore, it cannot be presumed that defendant no.2 would have signed the documents as a witness and not as a guarantor without understanding the contents of the documents."

9 This court is not entitled to interfere with the findings and conclusions of the trial court unless the same are wholly illegal or perverse or cause grave injustice/prejudice. I do not find any illegality or perversity in the impugned judgment and decree which calls for any interference in the appeal. The appeals being devoid of any merit, are dismissed leaving the parties to bear their own costs. Trial court record be sent back.

**March 03, 2011**  
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**VALMIKI J. MEHTA, J.**