

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

+ **RFA 113/2008**

% **November 01, 2011**

HEM CHAND JAIN Appellant
Through: Mr.N.Prabhakar, Adv.

VERSUS

MAYANK TRADING CORP. & ORS. Respondents
Through: Mr.A.K.Sharma and Mr.S.C.Shama, Adv.

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 Regular First Appeal under Section 96 CPC is to the impugned judgment of the Trial Court dated 24th January, 2008. By the impugned judgment, the suit of the appellant/plaintiff filed for recovery of the loan with interest was dismissed.

2. The appellant/plaintiff filed a suit for recovery of Rs.3,89,100/- of which an amount of Rs.3,00,000/- was the principal amount and the amount of Rs.89,100/- was towards interest. As per the case of the appellant/plaintiff,

the defendant No.1/concern (which is a sole proprietorship concern of defendant No.2) through the defendant No.3 took a loan of Rs.3,00,000/- from the plaintiff on 14th February, 2003 carrying interest @ 13.2% p.a. Defendant No.3, Shri Arun Kumar Jain is the husband of defendant No.2 Smt. Alka Jain who is the proprietor of defendant No.1/concern. The case of the plaintiff was that the interest was paid only for three months from 14.2.2003 to 13.05.2003 and thereafter the respondents failed to pay the interest. Ultimately, the appellant/plaintiff was forced to serve a legal notice but it failed to yield any result and, therefore, the subject suit came to be filed.

3. The respondents/defendants contested the suit. The main defence of the respondents/defendants was that though the defendant No.3 had signed/executed the receipt dated 14th February, 2003 with respect to the loan and interest, however, the receipt was alleged to have been signed in advance and the loan was never paid, though, the same was to be paid the next day. During the course of evidence, the respondents also alleged the document being receipt dated 14th February, 2003 to be a fabricated document because on the duplicate receipt with the respondents the expression 'for Mayank Trading Corp.' (i.e. defendant No.1) was not there and nor did the duplicate receipt contain signatures of any witnesses, and both of which aspects existed on the original receipt filed and exhibited by the appellant/plaintiff.

4. The Trial Court, after the pleadings were completed framed the

following issues:-

- “1. Whether the defendants have never executed the loan receipts? OPD
2. Whether the Plaintiff is entitled to a decree for a sum of Rs.3,89,100/- against the defendants? OPP
3. Whether the Plaintiff is entitled to any interest, if yes, at what rate and for which period? OPP
4. Relief.”
5. The appellant/plaintiff exhibited the original receipt dated 14th February, 2003 as Ex.PW1/4. The respondents/defendants exhibited the carbon copy of the receipt dated 14th February, 2003 as Ex. PW1/D1.
6. The Trial Court has dismissed the suit by laying emphasis inter alia on two main reasons. The first reason was that whereas the original receipt Ex. PW1/4 contains signatures of witnesses, however, there are no signatures of the witnesses on the carbon copy Ex. PW1/D1. The second reason for holding the receipt dated 14th February, 2003 to be a fabricated document was that whereas in the original receipt Ex. PW1/4, above the signatures of defendant No.3 it was written “For M/s Mayank Trading Company” (which is defendant No.1-concern) but this expression was not found in the carbon copy. These two aspects have been reiterated before me by the learned counsel for the respondents/defendants. Besides the aforesaid two main points, the Trial Court has also referred to the facts that appellant/plaintiff failed to disclose how he had the funds with him to make the payment of the loan and that respondents had also filed and proved on record their income

tax returns and other books of accounts

to show that such documents did not reflect any loan having been taken by the respondents/defendants.

7. In my opinion, the appeal deserves to be accepted and the impugned judgment deserves to be set aside. Firstly, the Trial Court has placed unnecessary emphasis on their existing signatures of witnesses in the original receipt Ex. PW1/4 and such signatures not existing in the carbon copy Ex.PW1/D1. The Trial Court has also placed unnecessary emphasis on the fact that in the carbon copy there is no expression “For Mayank Trading Company” above the signatures of defendant No.3/respondent No.3. In my opinion, emphasis on these two aspects was totally misplaced because the respondents in their pleadings/written statement had made a categorical admission that such a document was, in fact, executed by defendant No.3. The reason for disputing the loan was however that though this receipt was executed, the loan amount under the same was never given. Thus, once a categorical admission was there, it made no difference as to whether there existed signatures of the witnesses on the original receipt Ex.PW1/4 and did not exist on the carbon copy Ex. PW1/D1 and also the same reasoning applies with respect to the expression “For Mayank Trading Company” above the signatures of defendant No.3.

An important aspect which the Trial Court ought to have kept in mind was that the receipt is on the letter head of the defendant

No.1/concern, because surely, it was not the case of the respondents that this letter head was stolen or surreptitiously taken by the appellant/plaintiff from the respondents. In my opinion, therefore, the Trial Court misdirected itself in placing undue emphasis on differences of the original receipt and the carbon copy receipt to hold that the original receipt Ex. PW1/4 was a fabricated document. As already stated above, the issue of fabrication does not arise in view of the categorical admission of the respondents/defendants of having executed the receipt Ex.PW1/4 and of which the carbon copy was filed by the defendants themselves.

8. The Trial Court has then referred to the fact that in the income tax returns and the books of accounts of the respondent No.1 the loan is not reflected and thus it held that no loan was given. I fail to understand how any emphasis at all can be placed on this aspect, in the facts of the present case when the execution of the receipt is admitted, because, a business concern may not want to show a loan given in cash to it for various reasons. Merely because in the documents being the income tax return and the books of accounts, the loan is not shown cannot mean that the loan was not taken. Also, the Trial Court erred in holding that the appellant should have proved his resources and which having not been proved the loan cannot be said to have been given. In my opinion once the receipt is admitted to be executed, there is a presumption with the respect to the consideration having been passed. The onus, in fact, had thus shifted to the respondent No.1/defendant

No.1 to show that though the receipt was executed, in fact, the loan was never paid. In my opinion, the respondents/defendants have failed to discharge onus and the story set up by them is not believable that the loan was promised to be given on the next day. It is relevant to bear in mind that there was no affinity or attachment or very close relations between the two parties, and therefore, no credibility can be attached to the defence of the defendants because after all a stranger will not execute a document showing the receipt of loan, though, no such loan at all was given at the time of execution of the document. At this stage, I would refer with approval the argument of the counsel for the appellant/plaintiff that it is not the case of the respondents that the receipt Ex. PW1/4 was got signed either by fraud or by coercion.

9. Another important aspect which is worthy of mention, and as has been argued by the learned counsel for the appellant, is that the suit was filed on 12th August, 2005 and if the respondents had not received the loan two years earlier on 14.2.2003, and yet the original receipt was with the appellant/plaintiff, then the legal steps would have been taken by the respondents/defendants to have the document Ex. PW1/4 cancelled or taken back. Admittedly, no steps whatsoever were taken by the respondents/defendants.

10. In view of the above, the appeal is accepted. Impugned judgment and decree dated 24th January, 2008 is set aside. Though, the appellant/plaintiff

has prayed for a decree against all the defendants, however, since admittedly, the loan was taken only for the defendant No.1/concern whose sole proprietor is the defendant No.2, the decree therefore can be passed only against the defendants No.1 and 2/respondents No.1 and 2. Accordingly, the suit of the plaintiff for recovery of Rs.3,89,100/- is decreed along with pendent lite and future interest @ 13.2% simple with costs against defendant Nos.1 and 2/respondent Nos.1 and 2.

11. The appeal is, therefore, allowed and disposed of accordingly.

12. Trial Court record be sent back.

VALMIKI J. MEHTA,J

NOVEMBER 01, 2011

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