

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

% *Date of Judgment: 26.05.2011*

+ **R.S.A.No. 72/2011 & CM No. 8080/2011**

MOHD.SHAMIM Appellant
Through: Mr.Triloki Pandit, Advocate.

Versus

SHRI PREM SINGH Respondent
Through: Nemo

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

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

INDERMEET KAUR, J. (Oral)

This appeal has impugned the judgment and decree dated 13.01.2011 which has endorsed the finding of the trial Judge dated 01.11.2010 whereby the suit filed by the plaintiff (under Order XXXVII of the Code of Civil Procedure hereinafter referred as the 'Code') had been decreed. The application for leave to defend filed by the defendant had been dismissed.

2 The present suit had been filed for recovery of ₹1,38,600/-.

It was based on a promissory note dated 28.11.2007 purported to have been executed by the defendant in favour of the plaintiff promising to pay a sum of ₹90,000/- along with interest @ 2% per month. The case of the plaintiff was that a sum of ₹90,000/- had been taken by the defendant for 18 months; on the plaintiff's asking him for the loan amount, the defendant refused. Notice dated 10.09.2009 was served but to no avail. Present suit was accordingly filed.

3. After service of summons, the defendant filed his memo of appearance and thereafter filed an application for leave to defend. The application for leave to defend is on record and the same has been perused. No defence has been taken that the promissory note had not been executed by him or that the document did not bear his signatures; bald averment was that it is fabricated and no loan had been taken by the defendant.

4. The trial Judge had rejected this defence of the defendant holding it to be a sham and moonshine. No triable issue had arisen. The finding returned is as follows:-

"8. The first ground on which the defendant is seeking leave to defend the present suit is that though all the documents relied upon by the plaintiff are forged and fabricated. The plaintiff has filed on record the original promissory note dated 28.11.2007 and it is averred by the plaintiff that the same was executed by the defendant at the time of taking the loan from the plaintiff. The

defendant has taken a vague plea that the promissory note dated 28.11.2007 is a forged document. The defendant has nowhere denied his signatures on the promissory note dated 28.11.2007. On what basis the defendant is alleging that the promissory note dated 28.11.2007 is a forged document has not been explained in the application. Further with naked eyes, on comparing the defendant's signature on the promissory note dated 28.11.2007 with his admitted signatures on the application for leave to defend, it can be firmly said that signatures are of same person. Therefore, the said defence taken up by the defendant is a sham defence and does not disclose any triable issue.

9. The second defence which is being taken up by the defendant is that he had never taken any loan from the plaintiff of ₹1,38,600/- on 28.11.2007. Apparently this defence being raised by the defendant is sham defence as the plaintiff has never alleged in the suit that he had given a loan of ₹1,38,600/- to defendant on 28.11.2007. Plaintiff has averred that he had given a loan of ₹90,000/- on 28.11.2007. It further goes to show that defendant is denying the averments of the plaintiff without taking care to see as to what is alleged by the plaintiff just to raise a false plea. The defendant has nowhere denied this fact that he is not known to the plaintiff. Therefore, this defence raised by the defendant is false defence and has been taken up just to avoid his liability.

10 The third ground on which leave to defend has been sought is that plaintiff is trying to grab the money from the defendant. The said defence raised by the defendant is also false defence as plaintiff has claimed the money from the defendant on the basis of promissory note date 28.11.2007 wherein signatures of the defendant have not been denied in the application. The claim of the plaintiff is lawful claim based upon the promissory note and the allegations made by the defendant that plaintiff is trying to grab the money is a sham plea and does not raise any triable issue."

5. This finding was endorsed by the first appellate court. The finding is returned as follows:-

“7. The Ld. Trial Court rejected the first objection of the defendant that the plaintiff is trying to grab the money from the defendant with the reasoning that the said defence is a false defence as plaintiff has filed the suit on the basis of promissory note. Therefore, it was held that the claim of the plaintiff is lawful claim and the objection of the defendant is sham plea.

8. The second objection was rejected by the Ld. Trial Court because it was not the case of the plaintiff that he had advanced Rs. 1,38,600/ to the defendant. Therefore, denial of defendant that he had never taken a loan of Rs. 1,38,600/was without caring to see what were the allegations of the plaintiff in the plaint. The case of the plaintiff himself was that he had advanced a loan of Rs. 90,000/to the defendant. Therefore, denial by the defendant that he did not took loan of Rs. 1,38,600/did not help the case of the defendant.

9. The last objection of the defendant that the suit was based on forged and fabricated documents was rejected with the reasoning that it is not the case of the defendant that he did not sign on the promissory note.

10. The Ld. Trial Court under Section 73 of the Indian Evidence Act, 1872 compared the signatures of the defendant existing on the promissory note with the signatures of the defendant appended on application seeking leave to defend and came to a conclusion that both the signatures are of the same person.

11. In this appeal, similar grounds have been taken as were taken before the Trial Court by the defendant.

12. LCR was summoned to compare the signatures of the appellant existing on the promissory note with his admitted signatures. The conclusion drawn by this Court is also same that both the signatures are by one and same person.

13. The objections of the defendant and reasons of the Trial Court for rejecting the leave to defend application are noticed in detail in earlier paragraphs. After conclusion of this Court that signatures on promissory note and admitted

signatures of the defendant are identical nothing further survives in this appeal. Same is the finding of the Trial Court with regard to genuineness of the signatures of the defendant on the pronote.

14. The appellant had not raised any triable issue for leave to defend the suit. In this appeal, no irregularity or illegality is pointed out by the appellant in the order of the Trial Court.”

6. There is no perversity in this finding.

7. Substantial questions of law have been embodied on page 3 of the body of the appeal. No such substantial question of law has arisen. Appeal as also pending application are dismissed in limine.

INDERMEET KAUR, J.

MAY 26, 2011

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