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IN THE HIGH COURT OF DELHI AT NEW DELHI

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RFA No.530/2004

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16th May, 2012

VISHWANATH JHA

..... Appellant

Through: Mr. Shakher Prit Jha with
Mr. Vikrant Bhardwaj &
Mr. Bhajan Singh, Advs.

VERSUS

JAY PRAKASH PANWAR

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. This case is on the Regular Board of this Court since 5.3.2012. No one appeared on behalf of the respondent on 4.5.2012. Again today, no one appears on behalf of the respondent. I have therefore heard the counsel for the appellant and after perusing the record am proceeding to dispose of the appeal.
2. The challenge by means of this Regular First Appeal filed

under Section 96 of the Code of Civil Procedure, 1908 (CPC) is to the impugned judgment of the trial Court dated 26.7.2004 by which the trial Court passed a decree in favour of the respondent/plaintiff for a sum of ₹2,50,000/- alongwith interest, which amount the respondent/plaintiff claimed was the amount of the loan given by him to the appellant/defendant.

3. The facts of the case are that the respondent/plaintiff claimed that the appellant/defendant approached him for a loan of ₹2,50,000/- to repay another loan taken by him to purchase his house. Respondent/plaintiff claims to have given the loan of ₹2,50,000/- to the appellant/defendant on 7.10.1998, when the appellant/defendant is purported to have signed a receipt for the amount of ₹2,50,000/-. The respondent/plaintiff alleged non-payment of the loan with interest and therefore filed the subject suit.

4. The appellant/defendant contested the suit and pleaded that the appellant/defendant was in fact working for the brother-in-law, namely Nahar Singh Saxena, of the respondent/plaintiff. As Sh.Nahar Singh Saxena had accumulated dues towards the appellant/defendant of a sum of ₹1,10,000/-, therefore, the said Sh. Nahar Singh Saxena paid a sum of

₹1,10,000/- to the appellant/defendant and which is when the appellant/defendant put his signatures on an agreement to record the receipt of such amount of ₹1,10,000/-. The appellant/defendant pleaded that these signatures put on the agreement of ₹1,10,000/-, which were only on the revenue stamps, have been lifted from the agreement entered into with Sh. Nahar Singh Saxena, and those stamps with signatures were put on the receipt which is relied upon by the respondent/plaintiff for the alleged loan of the sum of ₹2,50,000/-.

5. After the pleadings were completed, the trial Court framed the following issues:-

- “1. Whether there is any privity of contract between the parties. If so, what is its effect? Onus to prove upon the parties.
2. Whether the receipt dated 7.10.98 is forged and fabricated document, if so, what is its effect? OPD
3. Whether the plaintiff is entitled to decree of suit amount alongwith the interest, if so, at what rate? OPP
4. Relief.”

6. The main issue which was to be decided in the suit, and which is also the issue to be decided in this appeal, is whether the appellant/defendant ever received a sum of ₹2,50,000/- from the

respondent/plaintiff under the receipt dated 7.10.1998. Learned counsel for the appellant/defendant argues the following points in support of the appeal for setting aside of the impugned judgment, and which arguments I accept in toto, and which arguments show that the appellant/defendant never received any loan from the respondent/plaintiff:-

i) The respondent/plaintiff in his cross-examination admitted that he was only an employee getting a salary of ₹6,000/- per month, and therefore, for such a person who was earning only ₹6,000/- per month it is inconceivable that he could grant a loan for an amount of ₹2,50,000/-, and that too in cash.

ii) The aforesaid aspect that the loan could never have been granted by the respondent/plaintiff who was earning only ₹6,000/- per month, is further confirmed by the fact that the appellant/defendant was not in any manner related to the respondent/plaintiff, for such a huge favour being granted to the appellant/defendant by the respondent/plaintiff.

iii) The story of grant of loan of ₹2,50,000/- is quite clearly false because why would the respondent/plaintiff, and who only claims to

appellant/defendant, arrange an amount of ₹2,50,000/- by collecting money from his relatives and selling of jewellery as stated by him, and which the respondent/plaintiff would have done only if the appellant/defendant was so closely related to the respondent/plaintiff or so much obliged to the respondent/plaintiff, and which admittedly is not the position.

iv) It is inconceivable for a person having only a monthly income of ₹6,000/ to grant a loan of ₹2,50,000/- without any guarantee or revisable security to ensure repayment of the huge amount of ₹2,50,000/-

v) There are two signatures which appeared on the receipt dated 7.10.1998, Ex.PW1/A, one on top of the other, and there is no reason as to why there should be two such signatures and that too across three revenue stamps for the top set of signatures (which in fact have been lifted from the agreement with Sh. Nahar Singh Saxena of ₹1,10,000/-) and across two revenue stamps for the bottom signatures especially taken with the fact that the second signatures are in fact forged and fabricated signatures.

vi) The document, Ex.PW1/A is in two parts i.e. a promissory note

and a receipt, and only the receipt part thereof is signed and not the promissory note part showing that the respondent/plaintiff did not have sufficient signatures of the appellant/defendant with him to put on that portion of the document which was a promissory note.

vii) The receipt dated 7.10.1998, Ex.PW1/A, is witnessed by two witnesses both of whom are closely related to the respondent/plaintiff. The first witness, Sh. Om Prakash is the brother of the respondent and the second witness, Sh. Manoj Kumar is the sister's son of the respondent/plaintiff. Both these persons came into the witness box and admitted their relations with the respondent/plaintiff.

viii) The legal notice dated 27.8.2001 of the respondent/plaintiff was served upon the appellant/defendant, claiming the suit amount and relying upon the disputed document, Ex.PW1/A, immediately after and as a counterblast to the legal notice dated 6.8.2001 sent by the appellant/defendant to Sh. Nahar Singh Saxena claiming his dues.

7. Since I am completely agreeing with the arguments as raised on behalf of the appellant/defendant, I need not again reproduce the same to avoid prolixity. The aforesaid arguments quite clearly show that neither the

respondent/plaintiff had any legal means to give loan of a huge amount of
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₹2,50,000/-; considering that he himself was only an employee at ₹6,000/- per month, nor were the relations so close that the respondent/plaintiff would have taken loan from his relatives and sold his jewellery to give the loan of ₹2,50,000/- to the appellant/defendant, and nor would the loan have been given of the huge amount without the respondent/plaintiff securing himself either by a guarantor or a proper security.

8. I may note that the trial Court has in the impugned judgment observed that it has peeled the signatures of the appellant/plaintiff which exist on the revenue stamp to ascertain whether they were lifted from the agreement of ₹1,10,000/- of the appellant/defendant with Sh.Nahar Singh Saxena, and the trial Court has then observed that there does not appear to be traces of any paper on the back of the revenue stamp to show that the same are lifted from any other document, however in my opinion, the rationale employed by the trial Court is not correct inasmuch as surely on many an occasion signatures can be lifted without there being traces of the paper from which it is lifted. This aspect has to be also taken with the fact that the appellant/defendant had denied the second signatures which were appearing on the receipt, Ex.PW1/A.

9. In view of the above, the appeal is allowed. Impugned
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judgment and decree dated 26.7.2004 is set aside. Suit of the respondent/plaintiff will stand dismissed, leaving the parties to bear their own costs. Decree sheet be prepared. Trial Court record be sent back.

VALMIKI J. MEHTA, J

MAY 16, 2012
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