

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

+ RFA No.608/2010 and CM No.14861/2010

% Date of decision : 14th December, 2012

MANALI MALIK & ORS. Appellants
Through : Mr. Sonal Sinha, Adv.

versus

REKHA KHANNA Respondent
Through : Mr. Alok Sharma, Adv.

**CORAM :-
HON'BLE MR. JUSTICE J.R. MIDHA**

JUDGMENT

1. The appellants have challenged the decree for `5,00,000/- passed by the learned Trial Court in favour of the respondent and against the appellants.
2. The appellants were the defendants and the respondent was the plaintiff before the learned Trial Court. For the sake of convenience, in this judgment, the parties shall be referred to as per their ranks before the learned Trial Court.
3. The plaintiff/respondent filed a suit for recovery of `5,37,500/- against the appellants/defendants before the District Judge. The case of the plaintiff is as under:-
 - (i) The plaintiff advanced a loan of `5,00,000/- by means of two cheques bearing Nos.689706 and 689707 for `3,00,000/- and `2,00,000/- respectively both drawn on State Bank of India,

Punjabi Bagh, New Delhi to Late Anil Kumar Malik. The loan carried interest @15% per annum. Late Anil Kumar Malik paid the interest up to November, 2006.

(ii) Late Anil Kumar Malik issued post dated cheques bearing No.194886 dated 30th January, 2007 for `3,00,000/- and No.194887 dated 10<sup>th</sup> February, 2007 for `2,00,000/- drawn on Bank of Punjab Limited, Green Park Branch to the plaintiff towards re-payment of the aforesaid loan.

(iii) Both the aforesaid cheques were dishonoured upon presentation due to insufficient funds.

(iv) Late Anil Kumar Malik expired on 1st February, 2007 leaving behind his widow and two minor children who were the defendants before the learned Trial Court and are appellants in this appeal.

(v) The plaintiff approached the defendants for re-payment of the loan in the last week of February, 2007 whereupon defendant no.1 assured to make the payment within one month. However, upon failure to make the payment, the plaintiff issued a legal notice dated 7th April, 2007 to the defendants.

4. The defendants contested the suit on various grounds inter alia:-

(i) The defendants denied for want of knowledge that Late Anil Kumar Malik took a loan of `5,00,000/- from the plaintiff and pleaded total ignorance of any transaction between the plaintiff and Late Anil Kumar Malik.

(ii) The defendants averred that the two cheques bearing

No.194886 dated 30th January, 2007 and No.194887 dated 10th February, 2007 for `2,00,000/- have been fraudulently manipulated by the plaintiff. It was averred that the plaintiff has somehow scrupulously obtained the said cheques from somewhere and has manipulated/fabricated the same with the intention to illegally enrich herself.

(iii) All bank accounts of Late Anil Kumar Malik were frozen w.e.f. 2nd February, 2007.

5. The plaintiff examined four witnesses to prove her case. The plaintiff herself appeared in the witness box as PW-1 and reiterated the averments made in the plaint. She proved the letter dated 3rd April, 2007 issued by State Bank of India – Ex.PW-1/A in which State Bank of India confirmed that two cheques bearing Nos.689706 and 689707 for `3,00,000/- and `2,00,000/- respectively favouring Late Anil Kumar Malik were debited from her account Nos.01190009882 on 28th December, 2004. The said letter was exhibited as Ex.PW-1/A. PW-1 proved the two dishonoured cheques bearing Nos.194886-87 dated 30th January, 2007 and 10th February, 2007 for `3,00,000/- and `2,00,000/- respectively as Ex.PW-1/B and Ex.PW-1/C. The bank return memos showing dishonour of the above cheques due to insufficient funds were proved as Ex.PW-1/D and Ex.PW-1/E. The legal notice dated 7th April, 2007 and the postal receipts/A.D. cards were proved as Ex.PW-1/F to Ex.PW-1/N.

6. PW-2, Manager, Centurian Bank of Punjab proved that cheques – Ex.PW-1/B and Ex.PW-1/C issued by Late Anil Kumar

Malik in favour of the plaintiff were dishonoured due to insufficient funds. PW-2 proved the relevant documents relating to dishonour of the said cheques as Ex.PW-2/A and Ex.PW-2/B. PW-2 proved the account statement dated 24th April, 2008 for the time period from 4th May, 2001 to 1st April, 2007 of late Anil Kumar Malik as Ex.PW-2/C. PW-2 further deposed that Ex.PW-1/D and Ex.PW-1/E were issued from their bank.

7. PW-3, Record Keeper of State Bank of India proved that two cheques bearing Nos.689706 for `3,00,000/- and 689707 for `2,00,000/- both dated 25th December, 2004 issued by the plaintiff were credited in the account of Late Anil Kumar Malik in his account in Indian Overseas Bank. PW-3 proved the attested copies of the cheques as Ex.PW-3/A and Ex.PW-3/B. The statement of the plaintiff's account was proved as Ex.PW-3/C. PW-3 further deposed that Ex.PW-1/A has been issued from their bank.

8. PW-4, Special Assistant of State Bank of India, Punjabi Bagh Branch produced the record of the Saving Bank Account No.01190009882 of the plaintiff. The witness proved the certified copy of the account opening form, Ex.PW-4/1. The witness proved the certified copy of the statement of account as Ex.PW-4/2. The witness also proved the certified copies of cheque Nos.689706-07 both dated 25th December, 2004 as Ex.PW-4/3 and Ex.PW-4/4. PW-4 deposed that both the said cheques were presented for clearing by Indian Overseas Bank on 28th December, 2004.

9. The defendant examined only one witness namely herself as DW-1. She deposed that she has no clue as to why and for what

reason her husband had taken loan of `5,00,000/- from the plaintiff. She deposed that her husband was a very decorated officer of LIC and had sufficient balance in his account and, therefore, there was no necessity for him to take the loan of `5,00,000/- from the plaintiff and that too on interest. She however, admitted the signatures of her husband on both the cheques but stated that the handwriting on the name of the plaintiff appearing in the cheque and amount was not in the handwriting of her husband. She pleaded that the name and amount on the said cheques to be fabricated and manipulated.

10. The findings of the learned Trial Court are as under:-

- (i) The payment of `5,00,000/- by the plaintiff to Late Anil Kumar Malik by means of two cheques bearing Nos.689706 for `3,00,000/- and for `2,00,000/- respectively both dated 25th December, 2004 has been proved by Ex.PW-3/A and Ex.PW-3/B.
- (ii) PW-1 has proved the said payment to Late Anil Kumar Malik as a loan. Though there is no loan agreement in writing but the loan transaction is proved by the oral testimony of the plaintiff and the payment of `5,00,000/- to Late Anil Kumar Malik by means of two cheques.
- (iii) The defendants have admitted the signatures of Late Anil Kumar Malik on the two cheques – Ex.PW-1/B and Ex.PW-1/C.
- (iv) The dishonour of the two cheques – Ex.PW-1/B and Ex.PW-1/C is proved by Ex.PW-2/C.
- (v) The vague denial of the loan is not sufficient to rebut the loan transaction proved by the plaintiff.

(vi) Merely because the cheques - Ex.PW-1/B and Ex.PW-1/C are not in the hand writing of the deceased does not mean that the cheques were illegally procured, forged and/or fabricated.

(vii) Even otherwise, Section 139 of the Negotiable Instruments Act draws a presumption in favour of the holder of the cheques that the cheques were received towards discharge of the debt.

(viii) The deposition of DW1 that she did not have knowledge as to why and for what reason, the amount of `5,00,000/- was paid by the plaintiff to her deceased husband is not sufficient to rebut the case of the plaintiff.

11. The learned counsel for the appellants has urged the following grounds at the time of hearing of this appeal:-

(i) The name of the plaintiff, date and amount on the two cheques – Ex.PW-1/B and Ex.PW-1/C are not in the handwriting of Late Anil Kumar Malik. The plaintiff has fraudulently filled-up the dates on the said cheques and the said cheques are, therefore, not valid in the eyes of law. It is further submitted that PW-1 has deposed in her cross-examination that the said cheques were already filled-up and Late Anil Kumar Malik had signed the said cheques before handing over to her which is false.

(ii) The parties are related to each other. The plaintiff came for mourning upon the death of Late Anil Kumar Malik and at that time, the plaintiff may have stolen the two signed blank cheques to misuse them later on.

(iii) The plaintiff is not entitled to any interest. The plaintiff has not proved any agreement with respect to the payment of interest.

It is submitted that the payment of interest by Late Anil Kumar Malik has not been proved. It is submitted that PW-1 in cross-examination deposed that Late Anil Kumar Malik paid interest of `6,250/- whereas there are no such pleading in the plaint.

12. Findings

12.1 The plaintiff has proved the payment of `5 lakhs to late Anil Kumar Malik by means of two cheques Ex.PW-3/A and Ex.PW-3/B. PW-1 has proved the said transaction to be a loan transaction by oral evidence which has not been rebutted by the defendants. The ignorance of the loan transaction pleaded by the defendants is not sufficient to rebut the evidence led by the plaintiff.

12.2 Vide order dated 2nd December, 2011, the plaintiff was directed to place on record the statement of accounts from which the disputed cheques were issued. In pursuance to the above direction, the plaintiff has filed the relevant statement of account which reveals that cheque – Ex. PW-3/A for `3,00,000/- was credited in the joint account of Late Anil Kumar Malik and his wife (defendant No.1) in account No.2333 on 28<sup>th</sup> December, 2004 and cheque – Ex. PW-3/B for `2,00,000/- was credited in the joint account of Late Anil Kumar Malik and his wife (defendant No.1) in account No. 2656 on 28th December, 2004. The defendants' plea of ignorance of the payment of `5 lakhs by the plaintiff is therefore dishonest.

12.3 The defendants have admitted the signatures of late Anil Kumar Malik on the two cheques Ex. PW-1/B and Ex.PW-1/C given by late Anil Kumar Malik to the plaintiff.

12.4 The defendants have raised a new plea at the time of hearing of this appeal that the plaintiff may have stolen two blank cheques at the time of mourning upon the death of late Anil Kumar Malik which is not plausible. That apart, this plea was neither raised before the trial court nor in the grounds of appeal and no evidence has been led thereon.

12.5 The different handwriting with respect to the name of the plaintiff, date and amount filled up on the two cheques, Ex.PW-1/B and Ex.PW-1/C, would not invalidate the cheques in view of presumption under Section 139 of the Negotiable Instruments Act, 1881.

12.6 With respect to the interest, although there is no written agreement between the parties, the plaintiff has proved the oral agreement. The trial court has awarded interest @ 7% per annum which is fair and reasonable.

13. For the aforementioned reasons, the appeal is dismissed.

14. All pending applications are disposed of.

15. The appellants have deposited the decretal amount with the Registrar General in terms of the order dated 19th August, 2010 and the said amount is lying in the fixed deposit. Let the decretal amount along with up to date interest be released to the defendants within four weeks.

J.R. MIDHA, J

DECEMBER 14, 2012