

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

+ C.R.P.No. 58/2014

% **24th July , 2014**

SMT. PUSHPA Petitioner
Through: Mr. Anuj Kumar Garg, Advocate.

VERSUS

MR. VIBHU GUPTA Respondent
Through:

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. This revision petition under Section 115 of Code of Civil Procedure, 1908 (CPC) is filed by the petitioner/defendant against the impugned order of the court below dated 17.2.2014 by which the court below has dismissed the application under Order 37 Rule 4 CPC for setting aside the judgment and decree dated 30.7.2012 which was passed on account of non-filing of the leave to defend application by the petitioner-defendant.

2. The facts of the case are that respondent-plaintiff filed the subject suit under Order 37 CPC for recovery of loan of Rs.4 lacs alongwith interest on the ground that petitioner-defendant from October 2010 to April

2011 was given a friendly loan of Rs.4 lacs for a period of two months, and for which purpose, a promissory note dated 12.4.2011 was executed by the petitioner-defendant besides handing over two cheques bearing no. 322740 and 322741 drawn on Oriental Bank of Commerce, Chandni Chowk, Delhi for Rs.2 lacs each. As per the plaint the petitioner-defendant assured that the cheques will be cleared on presentation. It however transpired that the petitioner-defendant had not even entered the account number in the cheques, and therefore, the cheques could not be presented. After serving the legal notice dated 7.9.2011, the subject suit for recovery was filed.

3. The defendant-petitioner was served through the process server on 4.5.2012 through her son Nikhil. Since no leave to defend application was filed the suit was decreed because once no application for leave to defend is filed the contents of the plaint are deemed to be admitted and decree is passed under Order 37 CPC.

4. The petitioner-defendant filed the subject application under Order 37 Rule 4 CPC claiming that she became aware of the decree only on 10.1.2013 when she received notice of the execution proceedings. Petitioner-defendant pleaded that the signatures on the AD card were not of her son Nikhil and those signatures were forged and fabricated. On merits, it was urged that the loan which was taken was not a loan of Rs.4 lacs by the

petitioner-defendant but the transaction was of two loans of Rs. 36,500/-each on 8.4.2011 and 30.4.2011 taken by the husband of the petitioner-defendant. It is claimed that husband of the petitioner-defendant paid an amount of Rs. 37,000/-, but the respondent-plaintiff did not return the cheques, and therefore a complaint was filed to the police on 13.6.2011. It was also contended that the promissory note was stated to be 'on demand' but has been executed only on 12.4.2011 for the loan which was admittedly given between October, 2010 and April, 2011, and therefore, there could not be one promissory note in April, 2011 for the loans given during October 2010 to April 2011. It was also contended before this Court that the legal notice dated 7.9.2011 has been wrongly sent to the address at Ajmer as per the report which has been taken from the website of the Indian Postal Department.

5. In my opinion, there is no illegality in the impugned order and the present petition is totally misconceived and liable to be dismissed. The reasons are stated hereinafter.

6. Firstly, as regards the contention that the signatures of the son Nikhil of the petitioner-defendant are forged and fabricated on the AD card is concerned, the trial court notes that the petitioner-defendant was not served by registered AD post but was served through the process server. On

realizing this mistake petitioner-defendant wanted to cover up her case by arguing orally that registered post was directed to be filed but was not filed and hence there is no service. On this aspect the trial court notes that once service is completed by one mode it makes no difference if answer mode directed for service was not followed. Trial court also notes that the process server has affirmed on oath with respect to the service, and therefore, there does not seem to be any reason to disbelieve the same.

7. So far as the argument that the promissory note has been executed on 12.4.2011 with respect to loans given during October 2010 to April 2011 is concerned, I do not think that there is anything strange about it because after totaling of the loans it is perfectly possible that a promissory note is executed for the total amount of the loans. Therefore, I do not find any illegality or lack of credibility in the promissory note executed by the petitioner/defendant.

8. The next arguments urged on behalf of the petitioner-defendant was that the loan was taken not by her but by her husband of two amounts of Rs.36,500/- each on 8.4.2011 and 30.4.2011, and the amounts were repaid by the husband of the petitioner/defendant but the cheques were not returned. I note that there is no proof filed on record even with respect to the returning of the alleged loan by the husband of the petitioner/defendant even for the

amounts of Rs. 37,000/- as pleaded overlooking the fact that even as per petitioner/defendant the total amount of loan was Rs.36,500/- plus Rs. 36,500/-. Clearly therefore, only a false story was pleaded to avoid the obligation of repayment under the transaction of loan and the complaint made to the police on 13.6.2011 was a manipulated complaint because the petitioner-defendant knew that payment was to be made within two months and thus the petitioner/defendant wanted to create evidence as a defence to the suit which would be filed on non-payment of the loan. In this regard I may note that the court below has also noted that why should cheques of Rs.36,500/- plus Rs.36,500/- be returned by the respondent-plaintiff when admittedly as per the petitioner-defendant, the husband of the petitioner-defendant had allegedly returned only Rs. 37,000/-. Also, as already stated above, there is no proof of payment of this Rs. 37,000/- which is conveniently stated to be in cash without being supported by any document. This argument therefore of the petitioner-defendant thus totally lacks any substance and is accordingly rejected.

9. It was finally argued that the legal notice dated 7.9.2011 by the respondent/plaintiff was sent at the wrong address at Ajmer, however, this argument is found to be totally frivolous because the postal receipts of the speed post and registered post receipts show different registered post number

than the report downloaded from the website of the postal department, and which pertains to a different registered article. Clearly, therefore, the petitioner-defendant is not stating the correct facts. In any case, service of legal notice before the suit has no bearing with respect to entering appearance after being served of the summons of the suit under Order 37 CPC.

10. In view of the above, there is no merit in the petition and the same is therefore dismissed with costs of Rs.15,000/- which shall be paid to the Delhi High Court Legal Aid Services Committee within a period of four weeks from today.

11. List before the Registrar on 24th August, 2014 for ensuring order of compliance of costs and if costs are not deposited, the Registrar General will be entitled to initiate proceedings to recover the costs as arrears of land revenue.

JULY 24, 2014/ib

VALMIKI J. MEHTA, J.