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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CMI 4/2015 and CM No.12575/2015 (u/O. XLIV R 1 r/w. O.33 CPC)
and CM No.12576/2015 (stay)

MOHD ILYAS Petitioner

Through: Mr. R.S. Kela, Advocate

versus

MOHD ATIQ Respondent

Through

CORAM:
HON'BLE MR. JUSTICE RAJIV SHAKDHER

ORDER
% **13.08.2015**

1. This is an appeal directed against the judgment and decree dated 25.03.2015, passed by the learned Additional District Judge (Central), Tis Hazari, Delhi.

1.1 By virtue of the impugned judgment and decree, the suit against the appellant / defendant, which was filed by the respondent/plaintiff for recovery of a sum of Rs.6,65,000/- has been decreed. In the operative part of the judgment, the relief as granted by the trial court against the appellant/defendant is as follows :-

“the appellant/defendant will pay a sum of Rs.5 Lakh alongwith interest at the rate of 8% p.a. with effect from 04.08.2011 till the amount is paid by him to the respondent/plaintiff.”

1.2 Furthermore, the trial court has also awarded costs of the suit in favour of the respondent / plaintiff.

2. In order to adjudicate upon the present appeal, the following broad facts are required to be noticed :-

2.1 It appears that the respondent / plaintiff approached the appellant / defendant for a loan in the sum of Rs.5 Lakh citing financial constraints in running his business. According to the respondent / plaintiff, the said sum of Rs. 5 lacs was in fact loaned to the appellant/defendant.

2.2 As per the respondent / plaintiff the loan was backed by an agreement dated 19.02.2010.

2.3 Importantly, it was the case of the respondent / plaintiff, before the trial court, that the said sum of Rs.5 Lakh was loaned to the appellant/defendant in the presence of his wife Mst. Zaida and one, Mohd. Sualin S/o. Adbul Latif.

2.4 Since, the appellant/defendant failed to repay the loaned amount, the respondent / plaintiff got a notice dated 04.08.2011, issued to the appellant/defendant.

2.5 The respondent / plaintiff being aggrieved by the fact that the loan was not repaid, instituted a suit for recovery, against the respondent/plaintiff.

2.6 Upon summons being issued in the suit, the appellant/defendant filed his defence by way of a written statement. The trial court vide order dated 16.10.2012 framed the following issues in the suit.

- “..i. Whether the plaintiff is entitled for decree of recovery of Rs.6,65,000/- against the defendant? (OPP)
- (ii). Whether the plaintiff is entitled for interest, if so, at what rate and for what period? OPP
- (iii). Relief..”

2.7 The respondent/plaintiff in support of his case examined two witnesses, that is, himself (i.e. PW-1) and another person, one, Mohd. Sualin (PW-2). Mohd. Sulain (PW2) was the person, who had witnessed the execution of the loan agreement dated 19.02.2010 (Ex. PW1/1)

2.8 The appellant/defendant (DW-1), on the other hand, examined only himself.

2.9 The trial court ruled against the appellant/defendant and decreed the suit in the terms indicated above.

3. Mr. R.S. Kela, who appears for the appellant/defendant assailed the judgment on the following two grounds :-

(i). That the respondent/plaintiff was not able to disclose the source from which he had obtained the sum of Rs.5 Lakh, which he purportedly advanced in the form of a loan to the appellant/defendant.

(ii). That the sum of Rs.5 Lakh could not have been paid in cash under the provisions of the Income Tax Act, 1961.

(ii)(a) As a corollary to this submission, it was contended by the learned counsel, that the respondent / plaintiff had failed to produce his books of accounts.

4. Before I proceed further, I may only indicate that the following has emerged from the record, most of which is not disputed before me by the learned counsel for the appellant/defendant :-

(i). That the signatures on the loan agreement dated 19.02.2010 (PW-1/1), were not disputed by the appellant/defendant.

(ii). Mohd. Sualin (PW-2), in his cross-examination, had clearly stated that the loan agreement (PW-1/1) was executed in his presence,

and that, the sum of Rs.5 Lakh was paid by the respondent/plaintiff in his presence, to the appellant / defendant.

(iii). There is a specific assertion in paragraph 3 of the plaint that the said amount was paid in cash not only in the presence of Mohd. Sualin but also in the presence of the appellant/defendant's wife, Mst. Zaida.

(iv). The appellant/defendant apart from a bald denial, in the written statement, did not produce his wife, Mst. Zaida, as a witness; for whatever it was worth.

(v). The respondent/plaintiff in his cross-examination clearly explained how he had obtained, at least, a substantial part of the money. This was recorded by the trial court in paragraph (I) of the impugned judgment. For the sake of convenience, the same is extracted hereinbelow :-

“.. I). PW1 during his cross examination also deposed that he arranged the amount of Rs.1 Lakh each from Barkat Ullah Sami and his mother and Rs.2.00 Lakh from Sami Ullah. It is pertinent that plaintiff disclosed the source of Rs.5.00 lacs which he had given to defendant as loan. Admittedly, defendant has not put any suggestion to the PW-1 that he had not arranged any amount either from his brothers or from his mother to give the loan to the defendant...”

(vi). There was no suggestion made to the respondent/plaintiff (PW-1) as to whether the said amount had been reflected in his books of accounts.

5. Having regard to the aforesaid, to my mind, the trial court has weighed the evidence placed before it by both parties and come to the

conclusion, on the balance, that the version put forth by the respondent / plaintiff is believable as against that set up by the appellant/defendant.

5.1 On the other hand, the entire concentration of the appellant/defendant has been on the fact that the parties were close relatives, and that, the loan agreement (PW1/1) was signed by the appellant/defendant, who claims to be an illiterate person, under the belief that it was a construction agreement. This version of the appellant/defendant has been disbelieved based on evidence placed before the trial court.

5.2 There is nothing on record to show that the appellant/defendant had at any point of time written to the respondent / plaintiff, as regards, what he understood as being, the terms of agreement executed between them (i.e. PW-1/1).

5.3 In these circumstances, the argument advanced by the learned counsel for the appellant/defendant that the trial court had not examined as to what was the source of the funds, which were supposedly loaned to the appellant/defendant, in my view, is not tenable. What was of more importance, was the fact: as to whether or not the money which was said to have been loaned by the respondent / plaintiff to the appellant/defendant had been received by the appellant/defendant. Mohd. Sualin (PW-2) has expressly stated so in his testimony before the court.

5.4 As indicated above, the respondent / plaintiff specifically, pleaded, and to my mind, took a chance, which was fraught with all kinds of difficulties, in averring, plainly, that the loan amount was

paid in cash in the presence of the appellant/defendant's wife.

5.5 This by itself, lends weight to the stand taken by the respondent/plaintiff that the sum of Rs. 5 lacs was loaned to the appellant/ defendant.

5.6 In so far as the other submission of the learned counsel for the appellant/defendant is concerned, which is, that the trial court did not rule on the aspect as to whether or not the loaned amount was disclosed in the income tax return or the books of accounts of the respondent/ plaintiff, in my view, is really, of no relevance given the evidence which has come forth.

5.7 If, the respondent/plaintiff, assuming without accepting, has failed to disclose the transaction in his books of accounts and/or income tax return, that would be an aspect of scrutiny by the Income Tax Authorities, and if, they were to find fault with the respondent/plaintiff, appropriate proceedings would be initiated against him under the extant provisions of the Income Tax Act, 1961.

5.8 Similarly, any breach of the Income Tax Act on account of payments made in cash could also be dealt with by the relevant authority, so constituted under the said Act.

6. Thus, for the aforesaid reasons, I find no error in the impugned judgment.

7. The appeal and the pending applications are accordingly dismissed.

RAJIV SHAKDHER, J

AUGUST 13, 2015

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