

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

+ **RFA No.942/2017**

% **10<sup>th</sup> November, 2017**

SURENDER KUMAR ..... Appellant

Through: Mr. Nitin Mittal, Advocate.

versus

M/S. PHOENIX ARC PRIVATE LIMITED ..... Respondent

**CORAM:**

**HON'BLE MR. JUSTICE VALMIKI J.MEHTA**

To be referred to the Reporter or not?

**VALMIKI J. MEHTA, J (ORAL)**

**C.M. No.40462/2017 (exemption)**

1. Exemption allowed subject to just exceptions.

C.M. stands disposed of.

**C.M. No.40463/2017 (for condonation of delay)**

2. For the reasons stated in the application, delay of 65 days

in re-filing the appeal is condoned.

C.M. stands disposed of.

**RFA No.942/2017**

3. This Regular First Appeal under Section 96 of Code of Civil Procedure, 1908 (CPC) is filed by the defendant in the suit

impugning the judgment of the Trial Court dated 23.3.2017 by which the trial court has decreed the suit of the respondent/plaintiff for a sum of Rs.9,33,833.84/- along with interest at 9% per annum. Respondent/defendant/asset reconstruction company was the assignee of the creditor and the appellant/defendant was the borrower who had failed to repay the loan amount.

4. The facts of the case are that the respondent/plaintiff pleaded that the appellant/defendant approached the erstwhile the Royal Bank of Scotland which was successor of ABN Amro Bank for grant of a personal loan and the appellant/defendant was granted personal loan on 18.7.2008 of an amount of Rs.7,98,589/- repayable in 60 monthly installments of Rs.20,492/-. It was pleaded that the appellant/defendant failed to repay the amount and adhere to financial discipline and therefore the amount as claimed has become due from the appellant/defendant. It was further pleaded that in terms of notification of Reserve Bank of India, ABN AMRO Bank was permitted to be substituted as the Royal Bank of Scotland N.V in the second schedule of the Reserve Bank of India Act, 1934 and the Royal Bank of Scotland vide a deed of assignment dated 30.4.2012 assigned

the loan amounts/debts to the respondent/plaintiff and the respondent/plaintiff therefore was entitled to the suit amount inasmuch as the appellant/defendant failed to pay the same in spite of the final demand notice dated 22.1.2014.

5. The appellant/defendant contested the suit and raised various objections. It was pleaded that the respondent/plaintiff had no privity of contract with the appellant/defendant. It was also pleaded that the assignment deed relied upon by the respondent/plaintiff dated 30.4.2012 was not duly registered and hence could not be relied upon. On merits, the appellant/defendant stated that the signatures of the appellant/defendant on the loaning documents were of the appellant/defendant, but, the signatures were taken on blank papers and no consideration was ever passed to the appellant/defendant from the Royal Bank of Scotland.

6. After pleadings were complete, the trial court framed the following issues:-

- i. Whether plaintiff has locus standi to file present suit? OPP
- ii. Whether suit has been properly valued for the purpose of court fees and jurisdiction? OPP
- iii. Whether present suit is within limitation? OPP
- iv. Whether this court has territorial jurisdiction to entertain this suit? OPP

- v. Whether defendant had paid the loan amount as alleged? OPD
- vi. Whether plaintiff is entitled for recovery of suit amount as prayed? OPP
- vii. Whether plaintiff is entitled for the interest over the suit amount, if so, at what rate and for what period? OPP
- viii. Relief.”

7. Respondent/plaintiff proved its case through PW-1 Sh. Hari Om and who was the duly authorized person of the respondent/plaintiff. The documents which are proved by the respondent/plaintiff are as under:-

| Sl. No. | No. of Exhibits  | Details of Documents                                                                                                                                           |
|---------|------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1.      | Ex.PW1/A         | Photocopy of certificate issued by RBI on 19.03.2010                                                                                                           |
| 2.      | Ex.PW1/B         | Plaint                                                                                                                                                         |
| 3.      | Ex.PW1/C         | Attested photocopy of Board Resolution                                                                                                                         |
| 4.      | Ex.PW1/D         | Photocopy of official Gazatted of India                                                                                                                        |
| 5.      | Ex.PW1/E1        | Loan Application                                                                                                                                               |
| 6.      | Ex.PW1/E2        | Loan Agreement                                                                                                                                                 |
| 6.      | Ex.PW1/E3        | Promisory Note                                                                                                                                                 |
| 7.      | Ex.PW1/F         | Photocopy of deed of assignment dated 30.04.2012                                                                                                               |
| 8.      | Ex.PW1/G1        | Copy of legal notice dated 22.01.2014                                                                                                                          |
| 9.      | Ex.PW1/G2        | Postal receipt dated 23.01.2014                                                                                                                                |
| 10.     | Ex.PW1/F (Colly) | Copy of statement of Ledger Account and calculation of due amount along with Certificate under Section 2A of Banker Book Evidence Act and 65-B of Evidence Act |

Appellant/defendant examined himself as DW-1.

8. Trial court has held that there was privity of contract of the appellant/defendant with respondent/plaintiff as respondent/plaintiff had succeeded in the debts of Royal Bank of

Scotland under the assignment deed Ex.PW1/F dated 30.4.2012. Trial court has also held that the respondent/plaintiff was entitled to the suit amount inasmuch as appellant/defendant admitted to his signatures on the documents and the case of the appellant/defendant that the documents were signed in blank could not be accepted. Trial court has also held that the amount due as was claimed in the suit stood proved in terms of the statement of account which was certified under the Bankers Books Evidence Act, 1891 as also under Section 65-B of the Indian Evidence Act, 1872 and which statement of account was proved as Ex.PW1/H (colly). Accordingly, trial court decreed the suit against the appellant/defendant for recovery of moneys.

9. Learned counsel for the appellant/defendant firstly argued that the trial court has wrongly decided issue no. 5 and which was that the appellant/defendant had repaid the loan amount, inasmuch as, this issue was deleted on an application filed by the appellant/defendant. In my opinion, even if this technical error is there in the impugned judgment that the trial court has decided an issue although it was struck off, the same would however not mean that the findings on other issues would not operate as against the appellant/defendant.

This first contention urged on behalf of the appellant/defendant is therefore rejected.

10. The second argument which is urged on behalf of the appellant/defendant was that the assignment deed proved as Ex.PW1/F dated 30.4.2012 could not be looked into as it was not registered and therefore the assignment deed was hit by Section 17(1) of the Registration Act, 1908. However, in my opinion this argument is also a frivolous argument because the requirement of registration of a document under Section 17(1) of the Registration Act is if the document pertains to an immovable property. The assignment deed in question pertains to debts which are a movable property and therefore Section 17(1) of the Registration Act does not apply. This argument of the appellant/defendant is therefore rejected.

11. Finally it was argued by the appellant/defendant that the statement of account proved in the suit through the witness of the respondent/plaintiff could not be looked at as this witness had no personal knowledge of the statement of account. Once again this argument in my opinion is misconceived because the statement of account was duly proved and which statement of account is certified

under the Bankers' Books Evidence Act and also under Section 65-B of the Indian Evidence Act. Once the statement of accounts is certified under the Bankers' Books Evidence Act, Courts have to presume that the said statement of account is correct as per the original ledger account maintained by the bank and therefore it cannot be argued by the appellant/defendant that the statement of account cannot be looked at allegedly on the ground that the witness had no personal knowledge of the entries. There is no requirement of a witness to prove a statement of account certified under the Bankers' Books Evidence Act to have personal knowledge of the entries because proving of a statement of account is a proof of the fact that the statement of account is regularly maintained by the bank in the regular course of its business. This argument of the appellant/defendant is also therefore rejected.

12. It is therefore seen that appellant/defendant having availed the loan amount way back in the year 2008 is misusing the judicial process for frivolously denying the entitlement of the respondent/plaintiff. Such dishonest people must be dealt with heavy hands. Accordingly, this appeal being without merit is dismissed and

the appellant/defendant is visited with costs of Rs.25,000/- and which costs shall be deposited by the appellant/defendant with the website [www.bharatkeveer.gov.in](http://www.bharatkeveer.gov.in) within a period of six weeks from today, failing which Registry will list the matter in Court for appropriate directions as against the appellant/defendant for recovery of costs.

**NOVEMBER 10, 2017**  
Ne/AR

**VALMIKI J. MEHTA, J**