

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

+ **RFA No. 633/2018**

% **7th August, 2018**

AJAY JAIN Appellant

Through: Mr. S.N. Gupta and Ms. P.
Gupta, Advocates.

versus

AKSHAY KUMAR AGGARWAL Respondent

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

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

C.M. Appl. No. 31601/2018 (for exemption)

1. Exemption allowed, subject to all just exceptions.

C.M. stands disposed of.

C.M. Appl. No. 31650/2018 (for delay)

2. For the reason stated in the application the delays of 11
days in re-filing the appeal is condoned, subject to just exceptions.

C.Ms. stand disposed of.

RFA No. 633/2018 and C.M. Appl. Nos. 31599-31600/2018

3. This Regular First Appeal under Section 96 of the Code of Civil Procedure, 1908 (CPC) is filed by the defendant in the suit impugning the Judgment of the Trial Court dated 1.3.2018 by which the trial court has decreed the suit for recovery of Rs. 7,75,000/- along with interest at 6% per annum on account of the appellant/defendant failing to repay the loan of Rs. 7,75,000/- advanced by the respondent/plaintiff to the appellant/defendant.

4. The respondent/plaintiff pleaded that he granted a loan of Rs.7,75,000/- to the appellant/defendant by means of four cheques as stated in paragraph 4 of the plaint as under:-

S. No.	Date	Mode of Payment	Amount
1.	28.05.2009	By way of Cheque bearing no. 404639	1,25,000.00
2.	12.10.2009	By way of Cheque bearing no. 348929	5,00,000.00
3.	20.02.2010	By way of Cheque bearing no. 348946	50,000.00
4.	26.02.2010	By way of RTGS 728578	1,00,000.00

5. It was pleaded that since the appellant/defendant failed to repay the amount hence the subject suit was filed.

6. Appellant/defendant contested the suit and did not dispute the receipt of amount of Rs.7,75,000/- but claimed that the appellant/defendant is entitled to adjustment on account of the appellant/defendant having supplied to the respondent/plaintiff vastu services/astrology services, gems and precious stones and also apples which were purchased by the respondent/plaintiff from the appellant/defendant. Suit was accordingly prayed to be dismissed.

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

- “a) Whether this court has no territorial jurisdiction to entertain the present suit? OPD
- b) Whether the plaintiff is entitled to the recovery of Rs.13,22,466/- as prayed? OPP
- c) Whether the plaintiff is entitled to the interest @ 24% per annum as prayed? OPP
- d) Relief.”

8. Trial court has dismissed the suit by holding that the appellant/defendant failed completely to prove that any vastu services were provided or that the appellant/defendant supplied any gem stones to the respondent/plaintiff or that the appellant/defendant supplied any apples to the respondent/plaintiff. These aspect are discussed in

paragraphs 7.4.b to 7.4.e of the impugned judgment and these paragraphs read as under:-

“b) The defendant has also failed to produce any documentary evidence to show that he provided consultancy services with respect to vastu to the plaintiff in or around the period when he received the payments from the plaintiff in 2009 and 2010. Specific question was put to the witness whether he had raised any invoice with respect to the service supplied by him to the plaintiff, to which he testified as under:-

“I am paying income tax as Vastu Consultant as main income source. I do not remember how much was assessed as income in the year 2009-10 but I can tell after seeing the record. I can produce the income tax return for the year 2009-10. Same is my answer with regard to year 2010-11. I maintain the books and records for Vastu Consultancy and Astrology pertaining to clients from the year approximately 2013. Before that, I was not maintaining any books or records for Vastu Consultancy and Astrology given to clients. I am giving bills to the clients for Vastu Consultancy and Astrology. In the year 2009-10, I used to issue bills for vastu consultancy or astrology to those clients who used to demand the same. I do not have the copies of the bills issued for the same. I can produce the copy of bills for the year 2013 and onwards.”

In the aforesaid cross examination, the defendant has categorically stated that he can not produce the bills raised with respect to Vastu Consultancy of relevant period and that he can produce copy of the bills only after the year 2013, which are of no relevance in the present case.

c) Similarly, the defendant has also failed to produce the invoice/bills with respect to the precious stones sold by him to the plaintiff and upon being question in this regard, he testified as under:-

“I have not shown the income generated from selling of gem stone and crystals in the income tax return. Voltd. I am showing the income generated from gem stone and crystals from the year 2013. I do not have purchase bills or the purchase of gem stone and

crystals. Voltd. I have purchase bills for the purchase of gem stone and crystals from the year 2013 onwards. I do not have the sale bills for the gem stone and crystals for the year 2009-10. I not maintain ledger for gem stone and crystals.”

From the said cross examination, it is clear that the defendant neither maintained any record regarding sale of precious stones, nor was able to produce any record of the relevant period. He stated that he could produce bill 2013 onwards, however, same are irrelevant to the present proceedings.

d) The defendant was also failed to produce any document or witness to prove that he had sold apples to the plaintiff in the year 2010 and the relevant portion of his cross examination in this regard is reproduced as under:-

“I do not have any delivery proof for selling the apples to plaintiff. Voltd. The same is with the plaintiff. I have sent the goods to plaintiff through private truck but the builty / challan. The name of truck driver was Aslam who was hired from Sikandrabad, U.P. I demanded the receipt from the said truck driver. Voltd. The driver informed that the same was kept by plaintiff. The hire charges were Rs.1,200/- and loading /unloading charges were Rs.500/- which were paid by plaintiff to the driver. The goods were delivered on 15.10.2010 at night.”

It may be noted that while in the aforesaid cross examination, defendant had stated that hire charges of Rs.1,200/- and loading charges of Rs.500/- were paid by the plaintiff to the driver, but in his own document Ex. Mark DX-1, in Statement No.2, he has charged the plaintiff for the loading charges at Rs.500/- and cartridge of Rs.1,200/-, which shows the contradictions in the testimony of this witness and the document prepared and filed by him. It may be noted that document exhibit Mark DX-1 (Colly.), which mentions the details of services and goods supplied by the defendant to the plaintiff were never accepted by the plaintiff, though, the plaintiff has filed the said document, but he has never accepted the contents of the same and the defendant has failed to produce any document signed by the plaintiff to prove that payments made by plaintiff were towards the goods and services supplied by the defendant and not as friendly loan.

e) As the plaintiff has proved the fact that he paid Rs.7,75,000/- to the defendant in 2009-2010 and as the defendant failed to prove that he supplied goods and services against the said amount, hence, it is held that the said amount was recovered by the defendant as loan from plaintiff and the plaintiff is entitled to recover the said amount from defendant.”

(underlining added)

9. In my opinion, trial court has rightly dismissed the suit because self-serving averments in deposition of having provided by the appellant/defendant to the respondent/plaintiff vastu services or precious stones or apples cannot be believed in the absence of any proof of supply of the same. This is all the more so in the opinion of this Court because a reading of the written statement shows that in the written statement it is not even vaguely stated that how the amount of Rs.7,75,000/- is divided as regards the value of vastu services provided or precious stones provided or apples sold by the appellant/defendant to the respondent/plaintiff.

10. C.M. Appl. No. 31600/2018 filed in this Court for additional evidence is dismissed for the reason that even if the photos filed now show that respondent/plaintiff visited the apple orchard of the appellant/defendant yet that is no proof of selling of apples and that too of a particular quantity and value.

11. There is no merit in the appeal and the same is hereby dismissed.

AUGUST 07, 2018/

VALMIKI J. MEHTA, J

