

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

+ **RFA No. 625/2018**

% **4th September, 2018**

ASHWANI KUMAR Appellant

Through: Mr. Abhishek Kumar, Advocate
(Mobile No. 9891138990).

Versus

KALIMUDDIN 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. 35700/2018 (for restoration)

1. This application is allowed and the present appeal is restored to its original number.

C.M. stands disposed of.

RFA No.625/2018 and C.M. Appl. Nos. 31118-20/2018

2. This Regular First Appeal under Section 96 of the Code of Civil Procedure, 1908 is filed by the defendant in the suit impugning the Judgment of the Trial Court dated 16.3.2018 by which the trial court

has dismissed the leave to defend application filed by the appellant/defendant and has decreed the suit for recovery of money filed by the respondent/plaintiff. The cause of action arising in favour of the respondent/plaintiff was on account of giving of a loan of Rs.15,00,000/- by the respondent/plaintiff to the appellant/defendant, and which loan was secured by the three subject cheques which were dishonored.

3. The facts of the case are that the respondent/plaintiff pleaded in the plaint that the appellant/defendant was in need of moneys inasmuch as the appellant/defendant was engaged in construction of flats at plot no. 408-409, Dhaka Johar, Near Parmanand Colony, Mukherjee Nagar, Delhi. In April, 2015, therefore on the appellant/defendant showing the respondent/plaintiff Collaboration Agreement entered into between him and Sh. Rakesh Kumar for construction of the flats on the aforesaid plot, the respondent/plaintiff arranged a sum of Rs.15,00,000/- which was paid to the appellant/defendant as loan on 22.4.2015. Appellant/defendant in token of having received the loan signed the receipt of the same date i.e. 22.4.2015, and appellant/defendant also gave three post dated

cheques dated 9.5.2016 for Rs.5,00,000/- each to the respondent/plaintiff drawn on State Bank of India Branch, Azad Market, Delhi, bearing nos. 845466-68. These cheques however on presentation were dishonored with the remarks '*funds insufficient*', and therefore the subject suit for recovery of Rs.15,00,000/- was filed.

4. Appellant/defendant filed his leave to defend application. In the leave to defend application the appellant/defendant did not deny that the subject three cheques were bearing his signatures. In the leave to defend application there is no denial that the receipt dated 22.4.2015 was executed by the appellant/defendant. Appellant/defendant pleaded that since the son of the respondent/plaintiff was an employee in a bank, and who assured that he will take a loan for the appellant/defendant from the bank, therefore the subject three cheques were given not to the respondent/plaintiff but to his son for obtaining the loan from the bank. In the leave to defend application there are statements of facts of Sh. Ashish, the brother of the appellant/defendant, having entered into a Collaboration Agreement with one Sh. Harbhajan Singh with respect to property bearing no. 16-1B, Indra Vikas Colony, New Delhi-110009, on a plot of 50 sq. yards,

of which second floor of the property was to vest with the brother of the appellant/defendant Sh. Ashish Kumar, and that this flat was to be sold to the relative of the respondent/plaintiff one Sh. Tahsim, and that a sum of Rs.7,50,000/- was prepared from the bank account of the son of the respondent/plaintiff and paid to Sh. Harbhajan Singh. It was also pleaded in the leave to defend application that the signatures of the appellant/defendant on the cheques are forged as also other details filled in dishonestly, fraudulently and maliciously. Appellant/defendant therefore prayed for grant of unconditional leave to defend by denying that he had ever received any amount of Rs.15,00,000/- from the respondent/plaintiff as loan.

5. Trial court has dismissed the leave to defend application by observing that the appellant/defendant does not deny that he gave the subject cheques to the respondent/plaintiff and which bear signatures of appellant/defendant. Trial court has further observed that there is a contradiction in the case of the appellant/defendant because on the one hand appellant/defendant said that he is not in the need of money and on the other hand it is pleaded that the son of the respondent/plaintiff who was working in the bank would get him a loan. It is also held by

the trial court that there is a Receipt dated 22.4.2015 bearing the signatures of the appellant/defendant with respect to taking of the loan. Accordingly, the trial court has dismissed the leave to defend application by making the following observations:-

“3. I have considered the submission of Ld. Counsel for the defendant and Ld. Counsel for plaintiff as submitted above. The defendant has not disputed the handing over of three cheques in question. His only defence is that four cheques were given by him to the plaintiff for obtaining loan from his son who is working in bank. Defendant has not mentioned in his application in which bank the son of plaintiff has been serving. No document has been filed on record on behalf of defendant to show that the son of the plaintiff has been working in a bank. Defendant has also not mentioned any detail regarding four cheques. Defendant has not stated about the amount of loan which were to be taken by him from bank. I agree with the submissions of Ld. Counsel for the plaintiff that four cheques are not required for obtaining the loan from a bank. Defendant has stated in his affidavit filed with the application under disposed that he has never in the need of money and has not approached the plaintiff for loan while he has taken plea that four cheques were given by him to the plaintiff for obtaining loan from the bank. If he was not in the need of money, why he has allegedly given four cheques for obtaining loan from a bank to the plaintiff. In the receipt dated 22.04.2015 it has been mentioned that three cheques have been given by the defendant to the plaintiff. If the four cheques would have been given by the defendant to the plaintiff, it must have been mentioned in the said receipt which has been duly signed by the defendant.”

6. I do not find any illegality whatsoever in the impugned judgment because the case/defence of the appellant/defendant is quite clearly completely false, besides being disjointed. How are any averments with respect to brother of the appellant/defendant being builder and having a second floor flat in a property at Indra Vikas

Colony which was sought to be allegedly transferred to a relative of the respondent/plaintiff one Sh. Tahsim, would in any manner be relevant or related or connected to the loan being given by the respondent/plaintiff to the appellant/defendant, is not explained. Also if the respondent's/plaintiff's relative was to purchase a second floor flat then cheques of payment would have been given by the respondent/plaintiff or his relative Sh. Tahsim to the appellant/defendant or his brother Sh. Ashish, but it cannot be that for such a transaction there will be cheques which will be handed over by the appellant/defendant to the respondents/plaintiff. Also, how this aspect of the brother of the appellant/defendant being owner of the Second Floor, Indira Vikas Colony is tied up to the admission of the appellant/defendant that he asked for loan from the son of the respondent/plaintiff who was working in a bank, is not at all explained. Trial court has rightly observed that the appellant/defendant has failed to state that, as to which bank was the son of the respondent/plaintiff an employee with and also it is not stated as to that what was the amount of loan which the son of the respondent/plaintiff had to allegedly obtain from the bank to be given

to the appellant/defendant. Also if loan had to be given to the appellant/defendant from the bank then where does arise the need of appellant/defendant handing over his signed cheques to the respondent/plaintiff or to the son of the respondent/plaintiff for that matter, because it is not the case of the appellant/defendant that the loan was already granted and the cheques were given by the appellant/defendant to the respondent/plaintiff or his son for repayment of the loan amount to the bank. In fact the complete defence stated by the appellant/defendant in the leave to defend application is totally confusing to say the least. Obviously, it's objective is of creating confusion and thus create a false defence for grant of leave to defend, and the trial court in my opinion has rightly disbelieved the case set up by the appellant/defendant and has therefore dismissed the leave to defend application.

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

SEPTEMBER 04, 2018

AK

VALMIKI J. MEHTA, J