

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

+ **RFA No. 829/2018**

% **1st October, 2018**

BRAJESH RAI Appellant

Through: Mr. Deepak K. Sharma,
Advocate with Mr. Ashish
Sharma, Advocate and Mr.
Kunal Vashisht, Advocate (M.
No.9911794319).

versus

GURMEET SINGH Respondent

Through:

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

To be referred to the Reporter or not? **YES**

VALMIKI J. MEHTA, J (ORAL)

Caveat No.910/2018

1. No one appears for the caveator. Caveat stands
discharged.

C.M. No.40484/2018(exemption)

2. Exemption allowed subject to just exceptions.
C.M. stands disposed of.

RFA No.829/2018 and C.M. No.40483/2018(stay)

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 02.06.2018 by which the trial court has decreed the suit for recovery of Rs.14 lakhs with interest being the amount of loan given by the respondent/plaintiff to the appellant/defendant.

4. The facts of the case are that the respondent/plaintiff pleaded that the appellant/defendant approached him in January 2011 for a loan of Rs.14 lakhs. Appellant/Defendant agreed to simultaneously handing over of the entire chain of title documents of the appellant's/defendant's property of 111 sq yds situated at E-358, Khasra 732, Village Jaitpur Extension-II, Badarpur, New Delhi. The respondent/plaintiff pleaded that at the time of receiving loan of Rs.14 lakhs, the appellant/defendant signed a Mortgage-cum-Agreement dated 12.01.2011, and also executed a separate receipt on the same date acknowledging the receiving of the loan amount. The respondent/plaintiff pleaded that the appellant/defendant paid interest till October 2012, and thereafter, stopped paying the interest, and

therefore, after serving a Legal Notice dated 01.12.2012, the subject suit was filed.

5. The appellant/defendant contested the suit and denied that he executed the Mortgage-cum-Loan Agreement dated 12.01.2011 or the receipt of the same date inasmuch as it was pleaded that though the signatures of the appellant/defendant did appear on the Mortgage-cum-Loan Agreement as also the receipt, however these documents were taken in blank by the respondent/plaintiff from the appellant/defendant. It is also pleaded that the respondent/plaintiff not only did not give the loan, but did not return the title chain of the documents and the blank documents which were signed by the appellant/defendant. On the respondent/plaintiff being confronted for return of the documents, the respondent/plaintiff told the appellant/defendant that he had misplaced the papers. The appellant/defendant also pleaded that there existed a partnership between the parties for financing vehicles for which a Partnership Deed dated 01.08.2009 was entered into, and this partnership was amicably dissolved on 05.10.2012, and when the respondent/plaintiff received a sum of Rs.72 lakhs from the appellant/defendant at the time

of final settlement of the partnership accounts. It was also pleaded that the Mortgage-cum-Loan Agreement is void as the same is not registered and not exempted under Section 49 of the Registration Act, 1908. There are also certain pleadings, and which are not relevant, with respect to various blank cheques being handed over by the appellant/defendant to the respondent/plaintiff. Suit was therefore prayed to be dismissed.

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

- “1. Whether the plaintiff is entitled to recover the suit amount of Rs.14,00,000/- from the defendant? OPP
2. Whether the plaintiff is entitled to any interest on suit amount? If so, at what rate and for which period? OPP
3. Relief”

7. The trial court has held that the Mortgage-cum-Loan Agreement need not be registered inasmuch as the said agreement would be operative if the suit was for recovery of moneys on the basis of a mortgage, but the subject suit is only a simple suit for recovery of moneys and not a suit filed under Order XXXIV CPC alleging existence of a mortgage. In my opinion, the trial court in this regard has committed no illegality inasmuch as the factum of loan which is

the subject matter of a mortgage deed is a collateral transaction, and such an agreement, so far as the grant of loan is concerned, is not required to be registered under Section 17(1)(b) of the Registration Act. A direct judgment in this regard is the judgment of a Single Judge of the Madras High Court in the case of ***Murugan v. Sumathradevi and Durairaj, CRP(P.D.) No. 1863/2003*** and this judgment holds that if there is a mortgage-cum-loan agreement, the said mortgage-cum-loan agreement can be looked into as an independent transaction so far as the aspect of loan is concerned, and in doing so, the said document can be looked into as a collateral transaction with respect to the loan given. In the case of ***Murugan (supra)***, the learned Single Judge has relied upon earlier judgments of the Madras High Court starting from the year 1931, wherein it has been held that a mortgage-cum-loan agreement, even if not registered, can be looked into, so far as a grant of loan under the subject agreement is concerned. In my opinion, therefore, the trial court has committed no illegality in referring to the Mortgage-cum-Loan Agreement with respect to the aspect of grant of loan.

8. The trial court, in my opinion, has also rightly disbelieved the case of the appellant/defendant that blank documents were signed by him. The same is disbelieved because why would blank documents be signed by the appellant/defendant and more importantly, if the said documents were not returned, as claimed by the appellant/defendant, then why was no action taken by the appellant/defendant against the respondent/plaintiff, including the sending of a legal notice or making a complaint stating that the respondent/plaintiff is not returning such signed documents. In any case, even if the appellant's/defendant's case of documents being blank is considered, there is no reason why the title documents of the Badarpur property of the appellant/defendant would be with the respondent/plaintiff. Therefore, the trial court has committed no illegality in rejecting the defence of the appellant/defendant and decreeing the suit.

9. Counsel for the appellant/defendant argued that the respondent/plaintiff has failed to prove the source of funds available with him for paying the amount of Rs.14 lakhs. However, in the facts of the present case, this defence is not relevant because the loan given to the appellant/defendant is duly proved by means of the

appellant/defendant executing the Mortgage-cum-Loan Agreement as well as the receipt, besides handing over the entire chain of title documents of Badarpur property to the respondent/plaintiff.

10. Finally, the learned counsel for the appellant/defendant argued that the suit is barred under the Punjab Registration of Money-Lender's Act, 1938, however when a query was put as to whether such a defence was raised, and such issue got framed and decided by the trial court, it is conceded that no such defence was raised and no such issue got framed. Therefore, this Court cannot look into this aspect which is argued because what is barred by Punjab Registration of Money-Lender's Act is not giving of casual loans but business activity of granting finance, and whether or not there is a business of giving finance is a disputed question of fact which requires trial, and therefore, such a disputed question of fact must be specifically pleaded and an issue got framed, and which admittedly has not been done by the appellant/defendant.

11. There is no merit in the appeal. Dismissed.

OCTOBER 01, 2018/Ne

VALMIKI J. MEHTA, J