

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

+ **RFA No. 998/2018**

% ***12th December, 2018***

AMIT GOEL

..... Appellant

Through: Mr. Sudhir K. Saneja, Advocate
(M. No.9810897157).

Versus

RAHUL BATHEJA

..... Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

C.M. No. 52063/2018(exemption)

1. Exemption allowed subject to just exceptions.

C.M. stands disposed of.

C.M. No. 52064/2018(for condonation of delay)

2. For the reasons stated in the application, delay of seven days in re-filing the appeal is condoned subject to just exceptions.

C.M. stands disposed of.

RFA No. 998/2018 and C.M. No. 52062/2018(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 01.06.2018 by which the trial court has decreed the suit filed by the respondent/plaintiff for a sum of Rs. 9,20,830/- alongwith interest @ 9% per annum on account of the respondent/plaintiff having given a loan of Rs. 8,50,000/- to the appellant/defendant.

4. Before I narrate the facts of the present case in detail, it is indeed required to be stated that the present litigation and defence by the appellant/defendant is symptomatic of the dishonest persons who exist in today's society and because of whom, courts are unnecessarily burdened with litigation including the filing of the present appeal. The same will be clear from the facts which are hereinafter narrated.

5. The respondent/plaintiff filed the subject suit pleading that he gave a loan of Rs. 8,50,000/- to the appellant/defendant. Out of the sum of Rs. 8,50,000/-, the appellant/defendant received two cheques drawn on State Bank of India (SBI) for Rs. 1,74,000/- and Rs.

1,20,000/-. An amount of Rs. 1,00,000/- was directly credited by RTGS in the account of appellant/defendant. Further, payments of Rs. 2,40,000/-, Rs. 1,00,000/- and Rs. 1,16,000/- were received in cash. On receiving of the loan amount, the appellant/defendant executed an Agreement dated 12.09.2014/Ex. PW1/1 acknowledging the factum of receipt of the loan of Rs. 8,50,000/-. A promissory note/receipt/Ex. PW1/2 was also executed by the appellant/defendant acknowledging the receipt of the loan and promising to repay the loan, and in this document Ex. PW1/2, all the details of the payments totaling to Rs. 8,50,0000/- received by the appellant/defendant have been mentioned. The loan was secured by a cheque of the appellant/defendant for a sum of Rs. 8,50,000/-/Ex. PW1/3 drawn on HDFC Bank, Vishakha Enclave Branch, Pritampura, New Delhi. Since despite repeated requests, the appellant/defendant failed to pay the loan, the respondent/plaintiff presented the cheque which was dishonoured with the instructions "payment stopped". After serving the Legal Notice dated 01.12.2014, and to which Reply dated 16.12.2014 was sent by the appellant/defendant, the subject suit was filed.

6. The appellant/defendant contested the suit and did not dispute his signatures either on the loan agreement or on the promissory note or on the receipt or on the dishonoured cheque. The appellant/defendant denied that he had taken any loan from the respondent/plaintiff and pleaded that the signatures of the appellant/defendant were obtained by one Sh. Manish Gupta on a blank promissory note and a blank agreement on the pretext that the respondent/plaintiff shall give a loan to Mr. Manish Gupta and the appellant/defendant was only to sign as a witness and he did sign only as a witness on the blank documents. As regards the issuance of cheque, appellant/defendant took up the plea that certain cheques from his cheque book were stolen, and therefore, he lodged a complaint with the Police Station K.N. Katju Marg, Rohini Sector 16, Delhi on 26.10.2014 and 01.11.2014.

7. After the pleadings were complete, trial court framed issues and the parties led evidence. These aspects are recorded in paras 7 to 9 of the impugned judgment and these paras read as under :

“7. On the basis of pleadings, following issues were settled vide order dated 01.07.2016:

Issue No. 1: Whether the plaintiff is entitled for recovery of Rs. 9,20,830/- as prayed for? OPP

Issue No. 2: If so, whether the plaintiff is entitled for any interest, if yes, for what period and at what rate? OPP

Issue No. 3: Whether the suit of the plaintiff is without any cause of action? OPD

Issue No. 4: Whether the present suit has not been properly valued? OPD

Issue No. 5: Relief?

PLAINTIFF EVIDENCE

8. Plaintiff in order to prove his case has examined himself as PW-1 and tendered his evidence by way of affidavit Ex. PW1/A. He has relied upon following documents:

1. Loan Agreement dated 16.09.2014 as Ex. PW1/1.
2. Promissory Note as Ex. PW1/2.
3. Cheque dated 05.11.2014 and the returning Memo as PW1/3 and Ex. PW1/4.
4. Copy of Legal Notice dated 01.12.2014 as Ex. PW1/5
5. Postal Receipts dated 01.12.2014 as Ex. PW1/6.
6. Reply dated 16.12.2014 sent by defendant as Ex. PW1/7.

8.1 PW-2 is Satish Kapoor. He has tendered his evidence by way of affidavit Ex. PW2/A.

DEFENDANT EVIDENCE

9. Defendant in order to prove his case has examined himself as DW-1 and tendered his evidence by way of affidavit Ex. DW1/A. He has relied upon copy of complaint dated 26.10.2014 and 01.11.2014 as Mark DW1/1 and DW1/2 AND LOAN Agreement dated 16.09.2014 as Mark A.”

8. The trial court has decreed the suit by holding that the respondent/plaintiff has proved the agreement of loan as Ex. PW1/1 and the promissory note as Ex. PW1/2. The appellant/defendant did

not dispute that his signatures appeared on the loan agreement as also on the promissory note-cum-receipt. In fact, besides the signatures of the appellant/defendant, the three documents are also thumb marked at all pages by the appellant/defendant. The trial court has held that it cannot be held that the appellant/defendant has signed as a witness because the signatures of the appellant/defendant appear on the right hand side of the last page of the loan agreement, and this space is reserved for the executant of the documents and in fact, the signatures of the appellant/defendant appear above the expression “first party” as typed on the right hand side on the last page of the loan agreement.

9. The trial court has also held that though the appellant/defendant claimed that he had lodged a police complaint about the loss of cheques, however when the police complaint/Ex. DW1/P1 was read, it was found that the said complaint nowhere mentions about the blank signed cheques of the appellant/defendant being stolen but this complaint was that one Mr. Manish Gupta had taken the appellant/defendant somewhere where two bank officials got the signatures of the appellant/defendant on some papers which later on the respondent/plaintiff showed as a loan agreement. Therefore, it

was found that the defence taken by the appellant/defendant in the written statement of the cheque being stolen was completely different than the contents of the police complaint which was made by the appellant/defendant. The trial court has also observed that there is no dispute that the appellant/defendant had received most of the amount by means of banking transactions i.e. encashing of cheques and a payment received through RTGS. Accordingly, the trial court, in my opinion, has rightly decreed the suit.

10. The Ld. counsel for the appellant/defendant firstly argued that in the loan agreement Ex. PW1/1, where details of payments have been given, a sum of Rs. 1,74,000/- is shown as part of the loan amount whereas the respondent/plaintiff in his cross-examination on 14.02.2007 admitted that the sum of Rs. 1,74,000/- was not towards loan, but was for purchase of goods by the respondent/plaintiff from the appellant/defendant. I have very closely gone through the relevant portions of the cross-examination of PW-1/respondent/plaintiff which appears at page 87 of this appeal paper book and nowhere even remotely the respondent/plaintiff has admitted that the cheque paid of Rs. 1,74,000/- to the appellant/defendant was towards purchase of

goods by the respondent/plaintiff from the appellant/defendant. This argument of the appellant/defendant is therefore rejected.

11(i). The Ld. counsel for the appellant/defendant then argued that the loan agreement is dated 12.09.2014 whereas the payments have in fact been received earlier and some payment credited thereafter in the account of the appellant/defendant (with the fact that one payment is said to be received by Cheque dated 28.08.2014) and this therefore showed, as per the Ld. counsel for the appellant/defendant, that the Agreement dated 12.09.2014/Ex. PW1/1 is a false document.

11(ii). Once again this argument of the appellant/defendant is a completely frivolous argument inasmuch as the loan agreement would only show a total payment of loan and it is not necessary that the loan should have been received only on the date of the loan agreement. Part of the loan can also be received in advance and part of the loan can be received/credited subsequently, but that does not mean that loan is not given for a sum of Rs. 8,50,000/-. In fact I would like to note that all the details of the payments are given exactly *qua* the

amounts and the details of the cheques as also the cash details, in the promissory note-cum-receipt Ex.PW1/2.

12(i). The Ld. counsel for the appellant/defendant finally argued that as per the photocopy of the loan agreement received by the appellant/defendant, alongwith summons, there were no signatures of witnesses which were found at the last page of the agreement, and the signatures which are now shown in the proved agreement Ex.PW1/1 which appears at pages 112 to 116 of the paper book shows signatures of the witnesses, and therefore the loan agreement should be held to be a forged and fabricated document.

12(ii). Once again this argument is frivolous because there is no requirement of an agreement of loan to be witnessed. Even if the respondent/plaintiff may have acted anxiously to add witness, and assuming the argument of the appellant/defendant is correct, yet, this fact in itself will not take away the fact with respect to the appellant/defendant admitting to having received most of the loan amount in his bank account and that his signatures and thumb impressions appear in the loan agreement and promissory note-cum-receipt. Also, it admitted that the dishonoured cheque has been issued

from the account of the appellant/defendant and was signed by the appellant/defendant, with the fact that defence set up in the written statement of the cheque being stolen is contrary to the case of the appellant/defendant in the police complaint/Ex.DW1/P1.

13. In fact I would like to note that the trial court has unnecessarily been more than liberal to the appellant/defendant in awarding interest at 9% per annum, because when a cheque is dishonoured it is the statutory right of the respondent/plaintiff to receive interest @ 18% per annum in terms of Section 80 of the Negotiable Instruments Act, 1881.

14. In view of the aforesaid discussion, this appeal is completely frivolous. In fact the defence of the appellant/defendant was and is completely dishonest. This appeal is therefore dismissed with costs of Rs. 50,000/- and these costs shall be deposited by the appellant/defendant with the website www.bharatkeveer.gov.in within four weeks from today. The receipt will be filed within five weeks from today. In case, the receipt of deposit of costs is not filed by the appellant/defendant within five weeks, the Registry will list the matter

in the Court for taking appropriate action against the appellant/defendant.

DECEMBER 12, 2018/Ne

VALMIKI J. MEHTA, J

