

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

% **Date of decision: 19th July, 2018**

+ **RSA 16/2017**

M/S NISHANT PUBLISHING HOUSE ...Appellant

Through: Mr. Sunil Kumar, Advocate

Versus

RAJENDER SINGH

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. This Regular Second Appeal under Section 100 of the CPC impugns the judgment and decree [dated 19th July, 2016 in RCA No.82/2016 (Unique ID No.02402C0245772015) of the Court of Additional District Judge-01, Shahdara District] of dismissal of the First Appeal under Section 96 of the CPC preferred by the appellant against the judgment and decree [dated 30th April, 2015 in Civil Suit No.335/2011 (Unique ID No.02402C0291762011) of the Court of Additional Civil Judge-cum-Commercial Civil Judge, Shahdara] allowing the suit of the respondent/plaintiff and passing a decree against the appellant/defendant of recovery of Rs.1,50,000/- with interest.

2. This appeal came up first before this Court on 17th January, 2017 when, without indicating the substantial question of law, if any, arising in the appeal and only on finding which notice of the appeal could have been issued, notice of the appeal was ordered to be issued and the trial court record requisitioned. Upon the counsel for the respondent/plaintiff appearing, vide order dated 16th March, 2017, subject to the decretal amount being deposited in this Court, the execution was stayed. Since then, this appeal is being adjourned.

3. Today, none appears for the respondent. Counsel for the appellant states that the counsel for the respondent is out of station. On the last date of hearing, i.e. 26th February, 2018 also, on such unilateral statement of the counsel for the appellant that the counsel for the respondent was unable to appear, adjournment was granted. In this view of the matter, adjournment is refused since it is not even known as yet whether any substantial question of law arises or not.

4. The counsel for the appellant, on enquiry states that the entire decretal amount has been deposited, partly before this Court and partly before the First Appellate Court.

5. The counsel for the appellant/defendant, qua the query regarding substantial question of law, draws attention to Pg.9 of the Memorandum of Appeal proposing the following substantial questions of law as arising in this appeal:

- “1. Is the standard of proof to prove a fact in civil cases as strict as in criminal cases?”*
- 2. Is it necessary to prove a fact beyond reasonable doubt in civil cases as is required in criminal cases or in civil cases on the bases of preponderance of probability can a fact be proved?*
- 3. In civil cases can the M.L.C. of an injured person be proved by the Medical staff who brought the medical document from the hospital when the injured has not appeared in the witness box?*
- 4. In civil cases, can the factum of a quarrel be proved by the police officials if they bring the Daily diary before the Hon’ble Court to prove the occurrence of quarrel.*

5. *In civil cases, can the adverse inference be drawn against a person who has advanced a friendly loan to another man but has not shown it in his IT returns or statement of account of that years?*
6. *In civil cases, can the adverse inference be drawn against a person who has not disclosed the sources from which he arranged the funds to advance a friendly loan to another man?"*

6. I am afraid the aforesaid do not qualify as substantial questions of law.

7. Supreme Court, in ***Veerayee Ammal Vs. Seenii Ammal*** (2002) 1 SCC 134 held that merely because on appreciation of evidence another view is also possible would not clothe the High Court to assume jurisdiction on issue of fact framed by the Trial Court by terming the question as substantial question of law. As far back as in ***Sir Chunilal V. Mehta Vs. Century Spinning and Manufacturing Co. Ltd.*** AIR 1962 SC 1314 reiterated in ***Kashmir Singh Vs. Harnam Singh*** (2008) 12 SCC 796, it was held that the proper test for determining whether a question of law raised in a case is substantial, is whether it is of general public importance or whether it directly and substantially affects the rights of the parties and if so whether it is an open question in the sense it is not finally settled or is not far from difficulty or calls for discussion of alternative views; if the question is settled by the highest Court or the general principles to be applied in determining the question are well settled and there is a mere question of applying those principles, it would not be a substantial question of law. It was further held that it is not within the domain of the High Court to investigate the grounds on which the findings were arrived at by the last Court of fact being the first Appellate Court. Mere appreciation of facts, documentary evidence was held

to be not raising a question of law. Even in ***Santosh Hazari Vs. Purushottam Tiwari*** (2001) 3 SCC 179 it was held:

“To be “substantial” a question of law must be debatable, not previously settled by law of the land or a binding precedent, and must have a material bearing on the decision of the case, if answered either way, insofar as the rights of the parties before it are concerned.”

Mention may also be made of ***Hero Vinoth Vs. Sheshammal*** (2006) 5 SCC 545 holding as under:

“24. The principles relating to Section 100 CPC, relevant for this case, may be summarised thus:-

(i) An inference of fact from the recitals or contents of a document is a question of fact. But the legal effect of the terms of a document is a question of law. Construction of a document involving the application of any principle of law, is also a question of law. Therefore, when there is misconstruction of a document or wrong application of a principle of law in construing a document, it gives rise to a question of law.

(ii) The High Court should be satisfied that the case involves a substantial question of law, and not a mere question of law. A question of law having a material bearing on the decision of the case (that is, a question, answer to which affects the rights of parties to the suit) will be a substantial question of law, if it is not covered by any specific provisions of law or settled legal principle emerging from binding precedents, and, involves a debatable legal issue. A substantial question of law will also arise in a contrary situation, where the legal position is clear, either on account of express provisions of law or binding precedents, but the court below has decided the matter, either ignoring or acting contrary to such legal principle. In the second type of cases, the substantial question of law arises not because the law is still debatable,

but because the decision rendered on a material question, violates the settled position of law.

(iii) The general rule is that High Court will not interfere with the concurrent findings of the courts below. But it is not an absolute rule. Some of the well-recognized exceptions are where (i) the courts below have ignored material evidence or acted on no evidence; (ii) the courts have drawn wrong inferences from proved facts by applying the law erroneously; or (iii) the courts have wrongly cast the burden of proof. When we refer to “decision based on no evidence”, it not only refers to cases where there is a total dearth of evidence, but also refers to any case, where the evidence, taken as a whole, is not reasonably capable of supporting the finding.”

8. The counsel for the appellant/defendant has been heard and the trial court record requisitioned perused.

9. The respondent/plaintiff instituted the suit from which this appeal arises, under Order XXXVII of the CPC, for recovery of Rs.1,50,000/-, pleading:

- (i) that the parties were known to each other;
- (ii) that the appellant/defendant used to carry out business of stationery supply and in February, 2008 approached the respondent/plaintiff stating that the appellant/defendant was facing financial crises and seeking a friendly loan of Rs.3,50,000/-, assuring to return the same and offering cheques for return thereof;
- (iii) the respondent/plaintiff lent Rs.3,50,000/- to the appellant/defendant and the appellant/defendant issued four cheques for Rs.50,000/-, Rs.1,50,000/-, Rs.1,30,000/- and Rs.20,000/-, dated 30th April, 2008, 31st July, 2008, 13th October, 2008 and 13th October, 2008 respectively, in repayment thereof;

- (iv) however, of the aforesaid cheques, two cheques for Rs.1,30,000/- and Rs.20,000/- were returned unpaid for the reason of the payment thereof having been stopped by the appellant/defendant;
- (v) that upon the respondent/plaintiff demanding the aforesaid amount, the appellant/defendant sent a legal notice on false pleas to the respondent/plaintiff;

10. Leave to defend was granted to the appellant/defendant and the appellant/defendant filed a written statement, pleading:

- (i) that the respondent/plaintiff motivated the appellant/defendant to purchase a property and appellant/defendant handed over two cheques for Rs.50,000/- and Rs.1,50,000/- dated 3rd April, 2008 and 31st July, 2008 respectively as token amount of the subject purchase to the respondent/plaintiff on the understanding that the same would be encashed subject to acceptance of offer of the appellant/defendant;
- (ii) no agreement for purchase of the property however came to be executed;
- (iii) that the appellant/defendant, becoming suspicious, requested the respondent/plaintiff to return the cheques but the respondent/plaintiff refused and asked the appellant/defendant to pay Rs.20,000/-;
- (iv) when Vipin Tyagi, the salesman of the appellant/defendant went to the premises of the respondent/plaintiff for receiving back the cheques, the respondent/plaintiff forcefully snatched the suit cheques from the said salesman of the appellant/defendant;
- (v) the suit cheques were without consideration.

11. In the aforesaid state of pleadings, the following issues were framed in the suit on 7th December, 2011:

- “1. Whether the suit is without cause of action? *OPD*
2. Whether plaintiff is entitled for the recovery of suit amount as prayed? *OPP*
3. Whether plaintiff is entitled for the interest over the suit amount? If so at what rate and for what period? *OPP*
4. Relief.”

12. The respondent/plaintiff, besides himself, examined three other witnesses and the appellant/defendant also in all examined four witnesses.

13. The suit court passed a decree in favour of the respondent/plaintiff and against the appellant/defendant, recording / reasoning:

- (i) that it was not in dispute that the suit cheques were signed by the appellant/defendant and thus presumption under Section 108(a) of the Negotiable Instrument Act, 1881 is attracted;
- (ii) that the appellant/defendant has been unable to prove the proposal for purchase of any property; no documents of the property which should have been perused by the appellant/defendant before making an offer, were produced;
- (iii) no description of the property proposed to be purchased was furnished and no agreement which the appellant/defendant wanted to enter into was produced;
- (iv) that Vipin Tyagi, who could have proved the story of the appellant/defendant, was not called in the witness box;
- (v) the appellant/defendant failed to prove non-existence of legally recoverable liability by any cogent evidence;

14. The First Appellate Court dismissed the appeal preferred by the appellant/defendant, reasoning:

- (i) that the appellant/defendant, in cross-examination of the respondent/plaintiff, suggested that photocopy of documents of the property qua which offer for purchase was desired to be made by the appellant/defendant were given by the respondent/plaintiff to the appellant/defendant and which were found unsatisfactory by the appellant/defendant and for which reason, the deal against which the cheques were handed over by the appellant/defendant could not be effected;
- (ii) however, the appellant/defendant did not produce the said documents which were admitted to have been handed over by the respondent/plaintiff to the appellant/defendant;
- (iii) that the pleadings and the evidence of the appellant/defendant were also vague as to whether the property towards purchase of which the appellant/defendant had issued the two cheques for Rs.50,000/- and Rs.1,50,000/- belonged to the respondent/plaintiff or to some other person;
- (iv) the appellant/defendant had also failed to explain why he had given two cheques to the respondent/plaintiff for purchase of a property when there was no agreement to sell even of the said property;
- (v) that the appellant/defendant had proved as Ex.DW-1/DX-1 and DW-1/DX-2 two photographs to prove that the respondent/plaintiff was doing business of sale/purchase of properties but the said photographs also show that the business being carried on in the premises to which the photographs pertain, is of sale of building material;

- (vi) that the appellant/defendant did not cross-examine the respondent/plaintiff on the statement of the respondent/plaintiff of doing the business of sale of building material;
- (vii) the appellant/defendant had failed to prove that the cheques for Rs.50,000/- and Rs.1,50,000/- were given as token amount for purchase of property;
- (ix) though it was the case of the appellant/defendant that the respondent/plaintiff had snatched the suit cheques of Rs.1,30,000/- and Rs.20,000/- from Vipin Tyagi, salesman of the appellant/defendant but the said Vipin Tyagi was not produced in evidence;
- (x) that the appellant/defendant had stated that the respondent/plaintiff had refused to return the cheques for Rs.50,000/- and Rs.1,50,000/- and on the other hand claimed that he sent his salesman Vipin Tyagi to collect the said cheques from the respondent/plaintiff and it was not understandable that if the respondent had refused to return the cheques, where was the need to send Vipin Tyagi to take back the cheques;
- (xi) no explanation was rendered by the appellant/defendant, as to why Vipin Tyagi was carrying the cheques for Rs.1,30,000/- and Rs.20,000/- and for whom the said cheques were meant;
- (xii) though it was pleaded that the cheques were so snatched by the respondent/ plaintiff from Vipin Tyagi on 11th October, 2008, but the cheques are of 13th October, 2008 and there was no explanation as to why blank signed post dated cheques were in custody of Vipin Tyagi when he visited the respondent/ plaintiff;

- (xiii) the appellant/defendant had also failed to prove that any salesman by the name of Vipin Tyagi was in its employment at the relevant time;
- (xiv) no complaint made by Vipin Tyagi of the incident on 11th October, 2008 or of thereafter had been proved and the complaint proved was made by the appellant/defendant;
- (xv) that the appellant/defendant had admitted that the appellant/defendant was not accompanying Vipin Tyagi on 11th October, 2008;
- (xvi) the appellant/defendant had thus failed to prove that the suit cheques of Rs.1,30,000/- and Rs.20,000/- were snatched by the respondent/plaintiff;
- (xvii) that all the four cheques have been returned dishonoured prior to the notice dated 25th August, 2008 proved as Ex.DW-1/4 first got issued by the appellant/defendant to the respondent/plaintiff and thus there was no need for a notice by the appellant/defendant to renege from the dealings with the respondent/plaintiff as was conveyed in the notice;
- (xviii) that the appellant/defendant had not even proved that the incident of snatching was mentioned in the instructions given to the bank for stopping payment of the suit cheques; though before the First Appellate Court, after enquiry had been made from the counsel for the appellant/defendant in this regard, an application under Order XLI Rule 27B was filed along with copy of a letter dated 13th October, 2008 claimed to have been written to the bank to stop payment of the suit cheques but even in the said letter it was merely mentioned that the cheques were disputed and incident of snatching was not mentioned; and,

(xix) no copy of the complaint claimed to have been made prior to 13th October, 2008 to the police regarding the incident of snatching was produced; the copy of the complaint, though not proved, was dated 24th October, 2008, falsifying the claim in the letter dated 13th October, 2008 to the bank of a complaint with respect to the suit cheques having been made to the police. There was no ground to interfere with the findings of the Trial Court.

15. The counsel for the appellant/defendant, upon being given an opportunity to argue, though has not disputed any of the reasoning aforesaid of the First Appellate Court and admitted that no substantial question of law arises therefrom, but only contends that the cheques for Rs.50,000/- and Rs.1,50,000/- though dated 3rd April, 2008 and 31st July, 2008 respectively, were not presented to the bank for payments till October, 2008 and it is inexplicable as to what prevented the respondent/plaintiff from presenting the said cheques.

16. I am afraid, the cheques for Rs.50,000/- and Rs.1,50,000/- are not subject matter of the suit from which this second appeal arises. The counsel for the appellant/defendant is also unable to show any such question being put to the respondent/plaintiff in cross-examination.

17. Though I must say that the reasoning given by the suit court is not satisfactory in as much as the suit court has, save for reproducing large portions of the evidence of the parties, not analysed the said evidence to reach the conclusion reached but the First Appellate Court is found to have analyzed the evidence led and only after giving cogent reasons, dismissed the appeal.

18. No substantial question of law, as proposed or otherwise, arises in the facts of the case.

19. Dismissed.

20. The amounts deposited before this Court as well as the First Appellate Court together with interest accrued thereon be released in favour of the respondent/plaintiff.

JULY 19, 2018
'pk'..

RAJIV SAHAI ENDLAW, J.

