

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

+ **RFA No. 993/2018**

% **10th December, 2018**

RAJ KUMAR GOYAL Appellant

Through: Mr. Sachin Aggarwal and Ms.
Varsha Chaudhary, Advocates.
(9811071022)

versus

VEENA SHARMA Respondent

Through:

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

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

CM No. 51698/2018 (Exemption)

For the reasons stated in the application, exemption allowed
subject to just exceptions.

CM stands disposed of.

CM No. 51699/2018 (delay in re-filing)

For the reasons stated in the application, delay in re-filing is condoned, subject to just exceptions.

CM stands disposed of.

RFA No. 993/2018 & CM No.51697/2018 (Stay)

1. 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 10.07.2018 by which the trial court has decreed the suit filed by the respondent/plaintiff for recovery of Rs. 5,00,000/- alongwith interest at 10% per annum simple. The suit has been decreed in favour of the respondent/plaintiff/seller for the balance of the price which was payable by the appellant/defendant/buyer *qua* the subject property bearing no. 1035, Dr. Mukherjee Nagar, Delhi-110009 which was sold by the respondent/plaintiff to the appellant/defendant. The amount towards the part of the sale consideration of Rs. 5,00,000/- was secured by cheques, and it is for the amount of cheques that the subject suit was filed.

2. The facts of the case are that the respondent/plaintiff was the owner of the subject property. By a Sale Deed dated 28.12.2006 the subject property was sold by the respondent/plaintiff to the appellant/defendant. The respondent/plaintiff pleads that on the date of the Sale Deed itself i.e. on 28.12.2006, the appellant/defendant executed an undertaking and gave two cheques of Rs. 2,50,000/- each for the balance sale consideration. These two cheques of Rs. 2,50,000/- each totaling to Rs. 5,00,000/- were in October 2007 replaced by the appellant/defendant with another cheque of Rs. 5,00,000/- being Cheque No. 065856 drawn on Axis Bank Limited, Shalimar Bagh, New Delhi. At that time of giving of the subsequent cheque of Rs. 5,00,000/-, the appellant/defendant had taken back the cheques of Rs. 2,50,000/- each alongwith the undertaking but the respondent/plaintiff kept photocopies of the same. In the cheque of Rs. 5,00,000/- the date was inadvertently written as 10.01.2007 instead of 10.01.2008 and in fact this date of 10.01.2008 is clearly mentioned in the undertaking. Though the respondent/plaintiff approached the appellant/defendant for correction in the cheque, the

appellant/defendant avoided to do so. Hence, the respondent/plaintiff prayed a for decree of a sum of Rs. 5,00,000/- alongwith interest.

3. On receipt of summons of the suit, the appellant/defendant contested the suit and pleaded that he had made payment of the entire sale consideration under the Sale Deed dated 28.12.2006, and this aspect is duly mentioned in the Sale Deed dated 28.12.2006. The appellant/defendant pleaded that the respondent/plaintiff wanted certain documents and cheques for the purpose of the Income Tax Department and therefore, the appellant/defendant gave some blank white papers signed by him alongwith the two cheques of Rs. 2,50,000/- to the respondent/plaintiff on the assurance that the same will not be misused. The appellant/defendant pleads that he had requested the respondent/plaintiff to return the cheques on many occasions, but the respondent/plaintiff failed to do so. In the month of October 2007, once again when the appellant/defendant approached the respondent/plaintiff for handing over the two earlier cheques of Rs. 2,50,000/-, the respondent/plaintiff requested for one back-dated cheque of Rs. 5,00,000/- to show to the Income Tax Department due to some difficulties. The appellant/defendant therefore gave the

cheque of Rs. 5,00,000/-, and on the basis of this cheque, the subject suit was filed. The appellant/defendant also pleaded that he had filed a civil suit for injunction for the demolition of the unauthorized construction against the previous owner of the subject property namely, Sh. Khushal Chand Arora, and on account of Sh. Khushal Chand Arora, the respondent/plaintiff had bad intention, and thus the signatures of the appellant/defendant were taken on blank sheets and also the three cheques.

4. The following issues were framed in the suit:-

“1. Whether the suit of the plaintiff is liable to be rejected U/o 7 Rule 11 CPC for being without any cause of action? OPD

2. Whether the plaintiff is entitled to a decree of suit amount? OPP

3. If the plaintiff is entitled to any amount, whether he is entitled to any interest? If yes, at what rate and for what period? OPP

4. Relief.”

5. In order to prove her case, the respondent/plaintiff examined herself as PW-1, and she also examined Sh. N.D. Chawla as PW-2, the witness to both the Undertakings dated 28.12.2006 and 21.10.2007. The appellant/defendant only examined himself as DW-1.

6. The trial court has decreed the suit by disbelieving the case of the appellant/defendant that there is no reason why blank signed sheets would have been given by the appellant/defendant to the respondent/plaintiff, as also three cheques, and that too not on one occasion but on two occasions. The trial court has held that the signatures of the appellant/defendant exist on both the undertakings dated 28.12.2006 and 21.10.2007, and the trial court has observed that for this purpose, it has examined the signatures of the appellant/defendant on two undertakings with the admitted signatures of the appellant/defendant appearing in the suit record. The trial court has held that possibly the real reason of the disputes is that under the Sale Deed what was sold was 160 sq. yds. but the appellant's/defendant's case was that the area of the plot handed over was only 148 sq. yds. I may note that there is no dispute that all the three cheques are of the bank of the appellant/defendant and are also signed by the appellant/defendant, with the fact that appellant/defendant does admit that he did sign the alleged blank signed sheets.

7. The trial court has also disbelieved the case of the appellant/defendant that since the Sale Deed mentions the receipt of the full sale consideration; therefore, the cheques could not be for the payment of the balance sale consideration. The trial court has also held that as per Section 139 of the Negotiable Instruments Act, 1881, a cheque is presumed to be given in discharge of a debt or liability.

8. Ld. counsel for the appellant/defendant once again argued before this Court that once in the Sale Deed it is written that the entire sale consideration is paid, therefore, it cannot be believed that the cheques were given in part payment of the sale consideration. This Court, however, cannot accept this argument for various reasons. Firstly, the trial court has rightly observed that the signatures on the Undertaking dated 28.12.2006 are similar to the signatures of the appellant/defendant as per the admitted signatures of the appellant/defendant appearing on the trial court record and this undertaking for handing over of the two cheques of Rs. 2,50,000/- each totaling to Rs. 5,00,000/- is of the same date as the Sale Deed executed by respondent/plaintiff in favour of the appellant/defendant. Also, it is very difficult to believe that just because the parties had

relationship of a seller and a purchaser, the appellant/defendant who is a purchaser would have given blank sheets as also total of three cheques, that too on two occasions separated by many months merely because the respondent/plaintiff/seller asked the appellant/defendant/buyer for help for income tax purposes and for dealing with the Income Tax Department. This argument of the appellant/defendant is therefore rejected.

9. Ld. counsel for the appellant/defendant then argued that the witness who appeared as PW-2, namely Sh. N.D. Chawla has admitted in his cross-examination on 18.03.2014 that he was not present at the time of execution of the two Undertakings dated 28.12.2006 and 21.10.2007, and therefore since the signatures of Sh. N.D. Chawla were taken subsequently on the undertakings, the two undertakings are to be discarded. In my opinion, however, this cross-examination of Sh. N.D. Chawla cannot help the appellant/defendant because there is no illegality if the signatures of a witness appear subsequently on a document, and provided the executant has admitted to the attesting witness that the executant has already signed the document, and thereafter the attesting witness signs. No suggestion

has been put to PW-2, Sh. N.D. Chawla, that when he signed as an attesting witness to the document, this witness did not take confirmation from the appellant/defendant that the appellant/defendant had not signed as an executant to the two undertakings. I, therefore, reject this argument urged on behalf of the appellant/defendant.

10. Ld. counsel for the appellant/defendant finally argued that in the Sale Deed it is written that the possession of the suit property has already been handed over to the appellant/defendant whereas in the Undertaking dated 28.12.2006 it is written that the vacant possession shall be received on 28.04.2007 and this shows that there is clear contradictions in the undertaking and the Sale Deed. However, in my opinion, even if this Court takes the fact that there is clearly a contradiction, since civil cases are decided on the balance of probabilities and in the present case when we consider the preponderance of probabilities, it is difficult to believe that the appellant/defendant would give a third person such as the respondent/plaintiff, who is only a seller of the property, various blank signed sheets as also a total of three cheques on two occasions. On this contradiction itself, therefore, this Court would not like to

disbelieve the case of the respondent/plaintiff and reasoning given by the trial court in the impugned judgment for decreeing of the suit.

11. Ld. counsel for the appellant/defendant had argued that the trial court has granted a high rate of interest, however it is seen that the trial court has only awarded interest at 10% per annum simple, and this rate in the opinion of this Court is not completely unreasonable that this Court should interfere.

12. In view of the aforesaid discussion, there is no merit in the appeal. Dismissed.

DECEMBER 10, 2018/ib

VALMIKI J. MEHTA, J