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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Reserved on: 22nd January, 2020

Pronounced on: 28th January, 2020

+ **RFA 34/2016**

M/S NARANG SHOES PVT LTD & ORS Appellants
Through : Ms.Sujata Kashyap, Advocate
with Mr.Rajiv Narang, Director.
versus

M P SHARMA & ANR Respondents
Through : Mr.Abhijat and Mr.Shaashwat
Jindal, Advocates.

CORAM:

HON'BLE MR. JUSTICE YOGESH KHANNA

YOGESH KHANNA, J.

1. This Regular First Appeal is preferred by the appellants against the judgment and decree dated 08.10.2015 passed by the learned Additional District Judge-01, Central District, Tis Hazari Courts, Delhi/ (hereinafter as the learned '*Trial Court*') in Civil Suit No.35/2015 whereby the suit filed by respondents under Order XXXVII CPC was decreed for a sum of Rs.18.00 lacs with interest @ 12% per annum while rejecting the leave to defend application of appellants.

2. The brief facts which led to filing of this appeal are the respondent No.1 was having a friendly relation with appellant No.2 for the last many years and in fact on 05.08.2011 both the appellants No.2 & 3 have taken a friendly loan of Rs.5.00 lacs from respondent No.1, which was returned by them. However, on 01.11.2011, the appellants No.2 & 3 allegedly assured the respondents to make them partners in the business

of appellant No.1 and asked them to invest money for gaining profits. The respondents agreed to invest money and on 05.11.2011 gave Rs.33.00 lacs in cash to appellants No.2 & 3 at New Delhi by arranging the same from brother, relative and respondent No.2. The appellant No.2 issued a receipt in his own handwriting and signatures stating *inter alia* he has taken a friendly loan of Rs.23.00 lacs from respondent No.1 and Rs.10.00 lacs from respondent No.2 and would return it within three months; also issued three cheques in favour of respondent No.1 to the extent of Rs.10.00 lacs; Rs.10.00 lacs; and Rs.3.00 lacs and also two post dated cheques of Rs.5.00 lacs each in favour of respondent No.2, all five cheques were dated 05.02.2012 and were issued from the account of appellant No.1; the appellant No.2 being an authorised signatory of appellant No.1. Thus, it was alleged by the respondents that out of the total sum of Rs.38.00 lacs, the appellants had returned an amount of Rs.20.00 lacs and balance amount of Rs.18.00 lacs was payable, which they did not pay and when last three cheques bearing Nos.874177, 874178, and 874181 for a sum of Rs.18.00 lacs drawn on ICICI Bank, Karol Bagh, New Delhi were presented, all of them were dishonoured on 03.08.2012 on account of '*insufficient funds*'. The respondents served a legal notice dated 01.09.2012 to which the appellants gave a reply dated 14.09.2012, but did not pay the balance amount, hence the suit for recovery of Rs.18.00 lacs with future interest under Order XXXVII CPC was filed by respondents.

3. The appellants filed leave to defend application alleging they never took any friendly loan; the respondent No.1 was unregistered money lender – used to lend money on interest and even had filed a complaint

under Section 138 Negotiable Instruments Act, 1881 viz. CC No.596/1/2012 against the appellants and when was unable to produce the income tax certificate/record, then stopped appearing and thus such complaint was ultimately dismissed in default in 2013 by the learned Metropolitan Magistrate and only then this suit for money recovery was filed.

Secondly, it was urged there were inherent contradictions in the pleadings viz. here the respondents alleged they gave a friendly loan but whereas in the complaint under NI Act their stand was money was invested to do the business. Further, it was alleged the respondents never filed any document to show their *source* of funds to pay Rs.38.00 lacs. It was also alleged only an amount of Rs.17.00 lacs was received from respondent No.1 as loan which was re-payable with Rs.3.00 lacs as interest hence, a total of Rs.20.00 lacs was returned to the respondent No.1 but later the intention of the respondents become bad and they misused the three cheque lying with them as security.

4. Learned Trial Court perused a document dated 05.11.2011 executed by appellant No.2 – the text of which is as under:-

“ I & M. P. Sharma are friendly. Taking loan of Rs.23,00,000/-

<i>CH No. 874176</i>	<i>10,00,000/-</i>
<i>CH No. 874177</i>	<i>10,00,000/-</i>
<i>CH No. 874178</i>	<i>03,00,000/-</i>

Given back after 3 months.

*Sd/- of defendant No.2 with date
05.11.2011*

*I & M. P. Bhavesh Bhargava are friends and taking loan of
Rs.10,00,000/-*

<i>CH No. 874179</i>	<i>05,00,000/-</i>
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Given back after 3 months.

Sd/- of defendant No.2 with date
05.11.2011”

5. This document is not denied by the appellants and it admittedly bear the signature of appellant No.2. The said document reveals both the parties knew each other and were friends and thus a friendly loan of Rs.23.00 lacs was taken from respondent No.1 and a friendly loan of Rs.10.00 lacs from respondent No.2, which was payable by appellant No.1, thus all were made liable. The argument that only an amount of Rs.17.00 lacs was taken as loan, thus, is factually incorrect. Further the argument viz somewhere in pleadings this amount is mentioned as *loan* and somewhere as an *investment* is hardly of any relevance as it is also an admitted case of the appellants that they took loan and never promised any share in business.

6. Further argument viz. the respondents are money lenders and CS No.126/2015 was also filed by the respondents against Mr.Vimal Ghai, an another borrower and as the respondents are not registered under the Money Lending Act, this suit is not maintainable. I disagree as except making this bald averment, no document was ever filed on record along with application for leave to defend to support such contention. Even the list of different cases for recovery allegedly pending in different Courts was also not filed. On the contrary, the document dated 05.11.2011, duly signed by appellant No.2, reveal he was a friend to respondent No.1 and had availed friendly loan, admittedly, *without interest*. If the respondents had given loan to appellants as a professional money lender, they would have definitely inserted a clause qua *interest* payable by the appellants,

which admittedly is not there in the document dated 05.11.2011. Thus after having availed the loan and getting their cheques dishonoured due to *insufficient funds*, the appellants cannot now urge such frivolous pleas to avoid just payments to the respondents asking them to show *source* of funds or by depicting them as professional money lenders.

7. The appellants themselves have urged to have taken a loan of Rs.17.00 lacs, out of which, admittedly, Rs.12.00 lacs was in cash. Did they ever ask the respondents their *source* of Rs.12.00 lacs or a certificate under the Money Lenders Act at the time of availing such loan. It is only due to their inability to pay the appellants they had realized to ask the respondents the *source* or the *certificate*, if any, under the Money Lending Act. Another contention of the appellants that they had issued cheques for double the amount of Rs.17.00 lacs is also factually incorrect as then the cheques would have been for an amount of Rs.34.00 lacs and not Rs.33.00 lacs. The contention such cheques were given as security is also belied by document dated 05.11.2011.

8. Lastly, the issue of limitation as urged by the appellants is also not convincing as suit *admittedly* was filed within three years of the date of cheques i.e. 05.02.2012.

9. The application for leave to defend thus contained only bald averments without any cogent proof filed.

10. The learned Trial Court had referred to various decisions on the aspect of grant of application for leave to defend and I need not to reproduce the decision in *M/s Mechelec Engineers & Manufacturers vs.*

M/s Basic Equipment Corporation (1976) 4 SCC 687, which carved out broad principles to be considered while granting such leave in a summary suit and so referred to in para No.12 of the impugned judgment.

11. No other issue is raised before me.

12. In view of above, I find no illegality in the impugned order passed by learned Trial Court and it cannot be faulted with. There is no merit in the appeal, hence is dismissed. The amount so deposited by the appellant be released to respondents with update interest forthwith and such quantification shall be subject to adjustment in total liability of the appellants per impugned judgment and decree. LCR be remitted forthwith. No order as to costs.

JANUARY 28, 2020

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YOGESH KHANNA, J.

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