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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Decided on: 17th March, 2015

+ CM(M) 61/2014

SMT ANJALI GUPTA

..... Petitioner

Through: Mr. Satya Prakash Gupta, Advocate.

versus

SHRI BABU RAM

..... Respondent

Through: Mr. Rajesh Goyal, Mr. Pankaj Garg
and Mrs. Manju, Advocates.

+ CM(M) 63/2014

SHRI JAGDISH PARSHAD

..... Petitioner

Through: Mr. Satya Prakash Gupta, Advocate.

versus

SHRI BABU RAM

..... Respondent

Through: Mr. Rajesh Goyal, Mr. Pankaj Garg
and Mrs. Manju, Advocates.

+ CM(M) 72/2014

SMT SHANTA GUPTA

..... Petitioner

Through: Mr. Satya Prakash Gupta, Advocate.

versus

SHRI BABU RAM

..... Respondent

Through: Mr. Rajesh Goyal, Mr. Pankaj Garg
and Mrs. Manju, Advocates.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J (ORAL)

CM No.1178/2014 (Exemption) in CM(M) 61/2014

CM No.1186/2014 (Exemption) in CM(M) 63/2014

Allowed, subject to all just exceptions.

CM(M) 61/2014 and CM No.1177/2014 (Stay)
CM(M) 63/2014 and CM No. 1185/2014 (Stay)
CM(M) 72/2014 and CM No.1249/2014 (Stay)

1. The three petitions challenge the common order dated 17th September, 2013 whereby the application of the Petitioners/Plaintiffs under Section 65 (c) of the Indian Evidence Act were dismissed.
2. The Petitioner Jagdish Prashad is the husband of Shanta Gupta and father-in-law of Anjali Gupta. Three suits were filed being Suit Nos.334/2010, 335/2010 and 336/2010 titled as 'Jagdish Prashad vs. Babu Ram', 'Anjali Gupta vs. Babu Ram' and 'Shanta Gupta vs. Babu Ram' respectively wherein Jagdish Prashad was examined as PW-1 on his own behalf in Suit No.334/2010 and as attorney of Anjali Gupta and Shanta Gupta in the other two suits. The facts in all the three suits are similar. The three suits were filed for recovery of money from the Respondent on the ground that a sum of Rs.1 lakh was deposited by Jagdish Prasad on 13TH January, 2002 with Respondent and two installments of Rs.1 lakhs each on 6th January, 2002 and 13th January, 2002 by Shanta Gupta through her husband Jagdish Prasad and Rs.1 lakhs each in three installments by Anjali Gupta on 3rd September, 2000, 23rd September, 2000 and 6th January, 2002 through her father-in-law with Respondent/Defendant. In this regard the Defendant issued six receipts as per the date of deposit on the letter pad of his firm M/s M.R. Trading Company and the said amount was agreed to be repaid with interest thereon @Rs.1.20% per month. Since original receipts were not available at the time of leading evidence the Petitioners filed application for leading secondary evidence with regard to the six receipts.

3. Jagdish Prashad appeared as PW-1 on behalf of himself and as Power of Attorney of Shanta Gupta and Anjali Gupta and deposed that on 28th February, 2002 two other cases were pending in the Court of learned Additional District Judge. His son Rajesh has a Photostat shop where he got the photocopy of the six receipts done before 28th February, 2002 and on the said date he brought all the original six receipts in the Court whereas the Photostat copies were kept at home. After the two cases, that is, 'Jagdish Prashad vs. Suresh' and 'Jagdish Prashad vs. Kailash Chand and others' were adjourned, he came out of the Court room with his counsel and proceeded towards the staircase for coming towards the ground floor. He informed his counsel that he had brought six original receipts but when he put his hand in left side pocket of his pant he was shocked to note that the said six receipts were not in his pocket. Jagdish Prashad went back to the Court of Additional District Judge and inquired from the peon and other staff of the said Court about the six receipts but he could not find the receipts. He also searched for the receipts in the corridor. Thus he went to lodge a report at the police post at Tis Hazari after getting the same typed at Tis Hazari Courts. On 1st March, 2002 he again came to the Court at Tis Hazari to file a case against the Respondent regarding deposit of amount. He purchased the court fee etc and went to inquire at the police post if the receipts were traced however, no receipts were traced and police informed that as and when they would get the receipts he will be informed.

4. The six receipts having been lost the Petitioner/Plaintiff Jagdish Prashad sought permission to lead secondary evidence. In the cross-examination Jagdish Prashad stated that he brought the originals to the Court to show his counsel who had asked him to bring the original on 28th

February, 2002. However, he has not examined his counsel as a witness. Further in cross-examination the Court found that one of the receipt, that is, dated 13th January, 2002 was stated to have been executed on Sunday when the shops at Azad Market remain closed and thus it was not possible that the Defendant would open the shop at Azad Market on Sunday, take the money and give the receipt to the Petitioner specially when the money was not for the requirement of the Defendant but for the purpose of the interest by the Petitioner. The Respondent suggested that he in fact does not sit at the Azad Market shop but at Khari Baoli Shop and at the Azad Market shop his nephew used to sit, therefore, there was no reason why the Petitioner would visit at Azad Market shop where the receipts were allegedly executed. Though Jagdish Prashad deposed that one servant was also present at Azad Market shop when the transaction took place however, he did not examine the said servant as well. The learned Trial Court further noted that the Petitioner has been regularly giving money to the Defendant and no photocopy of the receipts of the earlier transactions were kept and only photocopies of the receipts of these six transactions were kept. The learned Trial Court noted that the Petitioner failed to prove that he appeared before the concerned Court on 28th February, 2002 and that for drafting the plaint photocopy of the receipts would have been sufficient and no original receipts were required. Further the two suits were filed much thereafter and thus from the cross-examination it was evident that there was no occasion to bring the original receipt to the Court on 28th February, 2002 and it was held that the Petitioner has failed to prove that the six original receipts have been lost and he had made efforts to trace them.

5. Learned counsel for the Petitioner during the course of arguments before this Court contends that the finding of the learned Trial Court that the wife and daughter-in-law had not given the original receipts to Jagdish Prashad on 28th February, 2002 has wrongly been used against the Petitioner and in cross-examination he stated that the original receipts were handed by his wife and daughter-in-law prior to 28th February, 2002. This is the only incorrect finding pointed out in the impugned order. Even ignoring this finding and believing the version of the Petitioner that the wife and daughter-in-law handed over the receipts earlier, in view of the other facts noted by the learned Trial Court no illegality can be attached to the impugned order.

6. In a revision petition this Court will not re-appreciate the evidence on record and would interfere only if there is any illegality or perversity. From the cross-examination of the Petitioner Jagdish Prashad the Respondent has been able to demolish his case. The finding of the learned Trial Court that the Petitioner has failed to prove that the six original receipts had been lost and he made efforts to trace the same cannot be faulted.

7. The petitions and the applications are dismissed accordingly.

(MUKTA GUPTA)
JUDGE

MARCH 17, 2015
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