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

+ RFA 309/2015

SAINI WATER SUPPLIERS PVT LTD & ANR. Appellants
Through: Mr Vipin K. Saini, Adv.

versus

MANOJ SHARMA Respondent
Through: Mr Ankur Singhl, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

ORDER

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23.11.2015

CM Nos. 8284/2015 (condonation of delay of 10 days in filing) & 8385/2015 (condonation of delay of 90 days in re-filing)

1. Learned counsel for the respondent says that he does not wish to oppose the captioned applications.

2. In view of the reasons set out in the applications, and having regard to the fact that there is no opposition to the same, the applications are allowed and the delay is condoned. The applications are, accordingly, disposed of.

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3. This is an appeal preferred against the judgement and decree dated 21.08.2014 passed by the trial court. By virtue of the impugned judgement, the trial court has rejected the appellants' application for leave to defend, in a summary suit filed by the respondent/ plaintiff.

4. Briefly, the respondent/ plaintiff approached the trial court with the case that appellant no.2, who is the authorized signatory of appellant no.1 company, had approached him for a loan in the sum of Rs. 4 lacs. Loan was

sought for a period of six months. The respondent/ plaintiff, however, it appears, loaned to appellant no.2 only a sum of Rs. 3.50 lacs, albeit, in January, 2011 with a promise that it would be returned by July, 2011.

4.1 Since, appellant no.2, failed to return the amount, the respondent/ plaintiff pursued the recovery; whereupon, with great difficulty, a cheque dated 15.09.2011, drawn on ICICI Bank, New Delhi, in the sum of Rs. 3.50 lacs, was furnished by him.

4.2 It was the stand of the respondent/ plaintiff before the trial court that appellant no.2 requested him not to present the cheque, immediately, on account of shortage of funds.

4.3 Since, appellant no.2 failed to refund the money, the respondent/ plaintiff, presented the cheque on 15.02.2012. The cheque was, however, dishonoured and returned with endorsement “insufficient funds”. It is averred by respondent/ plaintiff that this fact was brought to the notice of appellant no.2, who apologized and promised to repay the amount shortly. The respondent/ plaintiff avers that it is on account of this reason that no criminal proceedings under Section 138 of the Negotiable Instruments Act, 1881, were initiated against appellant no.2.

4.4 The respondent/ plaintiff, however, got served a legal notice dated 30.04.2012, on appellant no.2.

4.5 It is, however, not disputed before me that the said legal notice was replied to by appellant no.2, and that, the reply is dated 28.05.2012.

4.6 The record though, reveals that, in the interregnum, appellant no.2 had filed two complaints with the police. The first complaint is dated 31.12.2011. This complaint was filed with Police Station (P.S.) Palam Village, Dawarka. The second complaint, which is, dated 28.05.2012,

which was filed with P.S. R.K. Puram, New Delhi.

5. Learned counsel for the appellants, based on the complaints, and his defence that there was no name of the drawee inserted in the subject cheque, says, that there are triable issues which arise in the matter and, therefore, the trial court could not have decreed the suit by rejecting the appellants' application for leave to defend.

5.1 Learned counsel for the appellants says that the appellants became aware of the fact that his own employee had stolen the cheque in issue, only when he received the legal notice dated 30.04.2012 issued by the respondent/ plaintiff.

6. Learned counsel for the respondent/ plaintiff, however, in support of his submissions largely relies upon the impugned judgement.

7. I have heard the learned counsels for the parties and perused the record. Quite clearly, the record shows that the following aspects, undeniably, emerge in the matter:

(i) The first complaint filed with the police, which is dated 31.12.2011, adverts to the fact that appellant no.2 lost his "purse" in Dwarka, Mangla Puri, Subzi Mandi, which, apparently, contained the driving license, cash in the sum of Rs. 20,000/-, and some papers, including the subject cheque.

(ii) The second complaint, which is dated 28.05.2012, however, takes a diametrically opposite stand. The complaint alludes to the fact that the subject cheque was stolen by one of the employees of the appellants in connivance with the respondent/ plaintiff.

(iii) Though appellant no.2 had knowledge of the fact that the subject cheque was stolen, as far back as in December, 2011, no instructions were issued by him to his banker to stop payment against the subject cheque.

(iv) The subject cheque was dishonoured, ultimately, on 15.02.2012.

8. The trial court has also come to the same conclusion, and findings qua this aspect of the matter are recorded in paragraph 7 of the impugned judgement. For the sake of convenience, the same are extracted hereinbelow:

“.....7. Ld. Counsel for defendants has very strongly argued that the cheque was missing when his purse was stolen in December, 2011 which contained driving licence, Rs. 20,000/- in cash and few papers including the cheque in question. He again has drawn my attention to another complaint dated 28.05.2012 which is five months after the previous complaint. The first complaint is to PS Dwarka and the second complaint is with PS R.K. Puram. The cheque in question was dishonoured on 15.02.2012. if we go through both the complaints, there is inconsistency and contradiction in both the complaints filed before two different police stations. In the first complaint, defendant no.2 had stated that his purse was missing which contained the cheque. However, admittedly, he did not pursue this complaint and no status report from the police with respect to the complaint dated 31.12.2011 was sought by defendants. It is admitted case of the defendants that defendant no.2 never took any steps to inform his banker regarding the missing cheque after complaint to the police and did not request his banker to ‘stop payment’ with respect to this missing cheque. It is surprising, that even after 15.02.2012 when his cheque was dishonoured, he did not take any steps to find out who had presented this cheque in his account if his earlier version is to be believed. It is finally on 28.05.2012 regarding the same cheque when he made another complaint to PS R.K. Puram wherein he stated that his employee had stolen the cheque and probably handed over to the plaintiff. He admittedly has not sought any status report from PS R.K. Puram whether said employee had been arrested or even questioned and what happened to the status of investigation vis-a-vis the plaintiff. This complaint has been lodged only after receiving the legal

notice of the plaintiff on 30.04.2012. It is also admitted by the defendants that police did not take any action and that he had not moved to the court of Ld. MM u/s 156(3) Cr.PC for lodging of FIR. It is also his admitted case that he received a legal notice from the plaintiff regarding recovery of the cheque amount on 30.04.2012. It is very surprising that defendant no.2 kept sitting over the matter and did not take any step for stopping the payment of the said cheque or to pursue his criminal case with the police. Therefore, it cannot be assumed that defendant was not aware of dishonour of his cheque and, therefore, could not take any action against the plaintiff. Hence, defence has no merits and is liable to be rejected. The second limb of the argument of the defendant is that there was no friendly relationship and when as per case of the plaintiff, defendant no.2 had asked for Rs. 4 lacs but he had given only Rs. 3.50 lacs. I am afraid there is no force in this argument as seeking loan of higher amount and finally disbursement of a lower amount does not hit the trustworthiness of the plaintiff. The plaintiff is not required to prove his friendly relations for granting the loan....”

9. Having regard to the above, and the material on record, in my view, no interference is called for in the impugned judgement. The appeal is, accordingly, dismissed. The registry will, therefore, release, forthwith, the amount deposited, with it, that is, in the sum of Rs. 3.50 lacs, along with accrued interest, to respondent / plaintiff or his duly authorised person towards due satisfaction of the decree.

10. However, parties shall bear their own costs.

RAJIV SHAKDHER, J

NOVEMBER 23, 2015

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