$~11

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

% *Date of Decision : July 17, 2015*

\+ **RFA(OS) 11/2015**

UMA SHANKAR SITANI ..... Appellant
Represented by: Mr.Rahul Shukla, Advocate

versus

VENI MEHTA ..... Respondent
Represented by: Ms.Deeksha Ladi Kakar, Advocate

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MS. JUSTICE MUKTA GUPTA

PRADEEP NANDRAJOG, J. (Oral)

CM No.1523/2015

For the reasons stated in the application the delay of 9 days in filing the appeal is condoned.

RFA (OS) No.11/2015

1. Mediation has failed and thus we have proceeded to hear arguments in the appeal. Learned counsel for the appellant urges that the respondent never gave the cheque in question to the appellant, as pleaded by her in the plaint. Learned counsel urges that the falsity of the stand of the respondent is evidenced by the fact that in her affidavit by way of evidence, Ex.PW-1/A, tendered by way of examination-in-chief she deposed that in consultation with her husband she gave the cheque. Learned counsel urges that in cross-examination she admitted that the cheque in question was signed by her husband. Counsel urges that in the plaint she pleaded that she

gave the cheque in presence of her husband but did not depose to said fact in her affidavit by way of evidence.

2. We have put to learned counsel for the appellant as to what is the relevance of said arguments, and the answer is that it falsifies the case pleaded by the respondent.

3. To appreciate the argument (in fact its absurdity) relevant facts would be that the respondent sued the appellant for recovery of principal debt in sum of ₹15,00,000/- (Rupees Fifteen Lacs only) and ₹6,90,000/- (Rupees Six Lacs and Ninety Thousand only) towards pre-suit interest calculating the same @ 24% per annum.

4. As per the respondent she advanced a friendly loan to the appellant by cheque No.44147 dated December 05, 2005 drawn on ING Vysya Bank in the presence of her husband. She pleaded that it was orally agreed that the amount would be refunded with interest @ 24% per annum and that the appellant returned to her ₹5,00,000/- (Rupees Five Lacs only) on May 19, 2006 vide cheque No.022026 drawn on Lord Krishna Bank Ltd. and another sum of ₹5,00,000/- (Rupees Five Lacs only) on December 13, 2007 vide cheque No.18025 drawn on Standard Chartered Bank, which cheques were honoured when presented for encashment. She pleaded that the appellant started avoiding her and did not return the balance loan amount in sum of ₹15,00,000/- (Rupees Five Lacs only) nor paid interest on the loan amount. In the written statement filed by the appellant he admitted having received ₹25,00,000/- (Rupees Twenty Five Lacs only) vide cheque No.44147 dated December 05, 2005 drawn in ING Vysya Bank but claimed that the cheque was issued by the husband of the respondent.

5. In the written statement the appellant pleaded that the money was

received as advance rent for five months, with agreed monthly rent being ₹5,00,000/- (Rupees Five Lacs only) for his property No.115, Sainik Farms, New Delhi which husband of the respondent had agreed to take on rent. He pleaded that neither the respondent nor her husband shifted to the property in question. He pleaded that he was entitled to retain ₹25,00,000/- (Rupees Twenty Five Lacs only) towards rent for five months. Appellant admitted having issued two cheques in sum of ₹5,00,000/- (Rupees Five Lacs only) each in the name of the respondent from his accounts maintained with Lord Krishna Bank and Standard Chartered Bank. He explained return thereof as a good will gesture.

6. It is apparent that the issue which had to be decided by the learned Single Judge was : Whether ₹25,00,000/- (Rupees Twenty Five Lacs only) was received by the appellant towards loan or towards 5 months advance rent for property No.115, Sainik Farms, New Delhi.

7. View taken by the learned Single Judge is in favour of the respondent. Faced with no documentary evidence contemporaneous when appellant received ₹25,00,000/- (Rupees Twenty Five Lacs only) from the respondent by way of a cheque, and it being a case of : a word of mouth versus a word of mouth, the learned Single Judge has applied the test of prudence and natural course of conduct required to be followed by humans of ordinary prudence. The conduct of the appellant in not writing any letter to the husband of the respondent to the effect that why was he not taking possession of property No.115, Sainik Farms, New Delhi has been held to be demolishing the defence set up by the appellant. If the appellant had received the money towards advance rent and had forfeited the same because he kept the property vacant, learned Single Judge has found it to be

a case of a conduct contrary to the said assertion when appellant returned ₹10,00,000/- (Rupees Ten Lacs only) by means of two cheques, each in sum of ₹5,00,000/- (Rupees Five Lacs only).

8. We highlight that the respondent has withheld filing his income tax return and the obvious reason is that the same did not show ₹25,00,000/- (Rupees Twenty Five Lacs only) received as rent for the year in question.

9. Whilst it may be true that even the respondent has not filed her income tax return, that even if she had done so it would have been irrelevant because she has not received any money from the appellant towards interest, the learned Single Judge has overlooked a very critical feature of the evidence, which goes against the appellant and is in favour of the respondent. In the written statement case pleaded is that after the appellant met the husband of the respondent, between the husband of the respondent and him it was agreed that respondent's husband would take on rent property No.115, Sainik Farms, New Delhi at a monthly rent of ₹5,00,000/- (Rupees Five Lacs only) for a period of 5 months commencing from December, 2005 and ending on May, 2006. As per the respondent, the husband of the respondent issued the cheque No.44147 dated December 05, 2005 drawn on ING Vysya Bank Delhi.

10. The evidence on record shows that the account in question on which the cheque No.44147 was drawn is in the name of the respondent but the authorized signatory thereof is her husband. Now, if the version of the appellant is correct, how would he know that the account is in the name of the respondent because the cheque in question was signed in his presence by the husband of the respondent. If this be so, if the story of the appellant is correct that he returned ₹10,00,000/- (Rupees Ten Lacs only) as a good will

gesture i.e. he gave up two month's rent which he had otherwise forfeited, the cheques would have been issued in the name of the husband of the respondent. That the two cheques were issued in the name of the respondent establishes that the appellant was aware that she took the money from the respondent and not the husband of the respondent and he had to return the money to the respondent. It is not the case of the appellant that the respondent agreed to take his property on rent and later on respondent's husband gave the cheque to him.

11. We may note that decree passed is in sum of ₹15,00,000/- (Rupees Fifteen Lacs only) treating the same as principal amount together with interest @ 12% per annum from the date when the suit was filed till realization. No pre-suit interest has been granted to the respondent and the respondent has neither filed a cross appeal nor a cross-objection.

12. Aforesaid facts bring out the absurdity in the arguments sought to be advanced by learned counsel for the appellant before us today at the hearing of the appeal.

13. The appeal is dismissed with costs against the appellant and in favour of the respondent.

<u>CM No.1522/2015</u>

Dismissed as infructuous.

(PRADEEP NANDRAJOG)
JUDGE

(MUKTA GUPTA)
JUDGE

JULY 17, 2015
mamta