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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision : July 01, 2015

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RFA(OS) 60/2015

YASH CHHABRA

..... Appellant

Represented by: Ms.Vibha Dutta Makhija,
Sr.Advocate instructed by Mr.Kush
Chaturvedi, Ms.Anshula Grover and
Ms.Disha Vaish, Advocates

versus

MAYA JAIN

..... Respondent

Represented by: Mr.Vijay K.Gupta, Advocate with
Mr.Mehul Gupta, Advocate

CORAM:

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

PRADEEP NANDRAJOG, J. (Oral)

Caveat No.624/2015

Counsel as above appears for the respondent/caveator and thus the caveat is discharged.

CM No.11220/2015

Allowed subject to just exceptions.

RFA (OS) No.60/2015

1. Though the appeal is listed for preliminary hearing today, since counsel appears for the respondent on advance copy of the appeal being supplied because of the caveat filed, we have heard learned counsel for the parties at length and while doing so have considered the original record of

CS (OS) No.2254/2013 which has been sent to Court along with the appeal in view of the practice directions issued that whenever Regular First Appeals laying a challenge to a decree passed by a learned Single Judge of this Court are listed before the Division Bench the record of the suit should be sent to Court.

2. The appellant was the defendant. The respondent was the plaintiff. Suit filed by the respondent under Order XXXVII of the Code of Civil Procedure has been decreed by the learned Single Judge vide impugned judgment/order/decreed dated April 27, 2015 as a consequence of IA No.10525/2014 filed by the appellant under Order XXXVII Rule 3(5) of the Code of Civil Procedure praying for leave to defend to be granted being dismissed.

3. The suit filed by the respondent was founded on a written acknowledgement dated January 21, 2011 with two cheques as collateral security. The written acknowledgement duly signed by the appellant reads : *‘Received with thanks from Mrs.Maya Jain W/o Sh.Parmod Jain, R/o E-16A, East of Kailash, New Delhi a sum of ₹45,00,000/- (Rupees Forty Five Lacs only) as loan against cheque No.690845 for ₹22,00,000/- (Rupees Twenty Two Lacs only) & Cheque No.690846 for ₹23,00,000/- (Rupees Twenty Three Lacs only) drawn on Corporation Bank, Noida as security’*. As per the plaint the appellant did not return the loan.

4. Seeking leave to defend the appellant admitted having executed the written acknowledgement dated January 21, 2011 and the contents thereof but pleaded that the receipt was obtained by fraud and misrepresentation. Being relevant for the purposes of the decision in the appeal we reproduce the pleadings concerning the plea of fraud and misrepresentation. The same

read as under:-

“The Plaintiff has relied on a receipt dated 20.01.2011 regarding an alleged money transaction. However, the Defendant has failed to disclose that the said receipt was obtained by fraud and misrepresentation. The husband of the Plaintiff approached the Defendant and insisted that he was interested in obtaining returns by making investment in the business of the Defendant. After pursuing the Defendant for months and trying to persuade him, he proposed to give ₹45 lakhs to the Defendant’s company on account of his extra income with the intention of obtaining returns on the said amount. He stated that this amount would be transferred through RTGS/NEFT from the account of the Plaintiff. However, the husband of the Plaintiff insisted that before the sum is transferred, the Defendant should issue cheques for security and pressurised the Defendant into issuing the same. The husband of the Plaintiff never made the payment with respect to the sum mentioned. The Plaintiff has failed to show by way of bank statements/RTGS or NEFT receipt that the sum of ₹45 lakh was paid by her to the Defendant. The receipt was thus obtained by fraudulently inducing the Defendant to believe that a sum of ₹45,00,000/- would be given to him towards his business, for which he even gave security by way of cheques.”

5. Territorial jurisdiction of this Court was challenged on the plea that the appellant resides in Noida.
6. In the plaint the cause of action has been pleaded with reference to the fact that the money was paid to the appellant at Delhi and so was the receipt executed.
7. Considering the plea of territorial jurisdiction the learned Single Judge has held that the principle of : ‘*the debtor has to find the creditor*’ was sufficient to confer territorial jurisdiction in the Courts at Delhi because the respondent was undisputedly a resident of Delhi, and for which the learned

Single Judge has referred to three decisions in paragraphs 6 and 7 of the impugned decision.

8. Apart from the reasoning, on the principle of law, of the learned Single Judge, in our opinion the additional reason to hold that Courts at Delhi would have territorial jurisdiction is the fact that in the plaint the respondent has pleaded in unambiguous language, and for which paragraph 14 of the plaint may be referred to, that the money was paid to the defendant at Delhi and the receipt in question was also executed at Delhi. Seeking leave to defend there is no negative pleading that the receipt was not executed at Delhi. There is no pleading that the receipt was executed elsewhere.

9. On merits the plea on which a triable defence was pleaded has been reproduced by us hereinabove in paragraph 4.

10. The learned Single Judge has held that the written acknowledgement recognizes receipt of ₹45,00,000/- and thus the plea that the payment was never received and that the payment had actually to be remitted through RTGS was prohibited because said plea could not be made good by leading evidence inasmuch as Section 91 of the Evidence Act prohibited any evidence to be led to contradict the terms of the written contract, and for which the learned Single Judge has relied upon a decision of the Supreme Court reported as AIR 2003 SC 2418 Roop Kumar Vs. Mohan Thedani.

11. Attacking the reasoning of the learned Single Judge learned counsel for the appellant pleads that where fraud is alleged in the execution of a document, Section 91 of the Evidence Act would have no place.

12. To appreciate the contention urged we note that the pleading of fraud, as laid, would be that the actual promise for the execution of the receipt was

that the payment would be made through RTGS without the respondent having any intention of performing the promise. Though the appellant has not expressly so pleaded, but the same is inherent in the plea of fraud taken because Section 17 of the Indian Contract Act, 1872 defines fraud as under:-

“17. ‘Fraud’ defined – ‘Fraud’ means and includes any of the following acts committed by a party to a contract, or with his connivance, or by his agent, with intent to deceive another party thereto or his agent, or to induce him to enter into the contract:-

- (1) the suggestion, as a fact, or that which is not true, by one who does not believe it to be true;*
- (2) the active concealment of a fact by one having knowledge or belief of the fact;*
- (3) a promise made without any intention of performing it;*
- (4) any other act fitted to deceive;*
- (5) any such act or omission as the law specially declares to be fraudulent.”*

13. There is no pleading that the respondent suggested a fact which was not true nor is there a pleading that the respondent actively concealed a fact nor is there any pleading of the respondent doing any act fitted to deceive nor is there any pleading of any act or omission of the respondent declared by any law to be fraudulent. The plea of fraud would at best relate to the third kind of fraud envisaged by the Section i.e. *‘a promise made without any intention of performing it’*.

14. Now, this plea begs the question : in the teeth of the written acknowledgment, execution whereof has not been denied, which written

acknowledgement acknowledges that the appellant has received ₹45,00,000/- (Rupees Forty Five Lacs only) from the respondent; and we emphasize the positive language of the receipt '*received with thanks*', could at all the appellant plead that as a matter of fact he had not received any payment and that the actual agreement was that he would receive the payment through RTGS.

15. Section 91 of the Evidence Act clearly prohibits such plea to be urged and we concur with the view taken by the learned Single Judge in para 8 of the impugned decision which is fully supported by a decision of the Supreme Court noted by the learned Single Judge.

16. The application seeking leave to defend is completely silent as to why did the appellant not write to the respondent since admittedly no money was transmitted through RTGS by the respondent to the appellant. If the appellant had executed the receipt on the promise that ₹45,00,000/- would be credited to his account through RTGS and for return of which the appellant gave two cheques to the respondent, the natural course of conduct would be that the appellant would immediately write to the respondent intimating that he has not received any money through RTGS and therefore the two cheques given by way of collateral security be returned. The appellant has not done so. This conduct of the appellant has rightly been noted by the learned Single Judge to return a finding that even otherwise the defence is a moonshine.

17. Two other pleas which were urged before the learned Single Judge concerning the two cheques not being presented for encashment and the cheques being issued by companies have not been urged at the hearing of the appeal, but notwithstanding the said fact, we find good reasons given by the

learned Single Judge to hold that the said two pleas were worthless and we would only add that the said two pleas are like loose strings fluttering in the wind, incapable of being converted into any useful fabric.

18. Before concluding we note that though the transaction is a commercial transaction and two cheques were issued by way of collateral security the post decreetal interest has been awarded by the learned Single Judge @ 9% per annum and the pre-suit interest has been claimed @ 12% per annum.

19. We find no infirmity in the view taken by the learned Single Judge and thus we dismiss the appeal affirming the impugned decree but refrain from imposing any cost.

CM No.11219/2015

Dismissed as infructuous.

(PRADEEP NANDRAJOG)
JUDGE

(MUKTA GUPTA)
JUDGE

JULY 01, 2015

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