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

+ RFA 441/2015

HDFC BANK LIMITED ..... Appellant  
Through: Mr Rajinder Mathur, Adv.

versus

MOHD SHAFEEQ ..... Respondent  
Through

**CORAM:**  
**HON'BLE MR. JUSTICE RAJIV SHAKDHER**

**ORDER**

% **13.07.2015**

CM No. 11937/2015 (Exemption)

1. Allowed subject to just exceptions.

CM No. 11938/2015 (Condonation of delay)

2. This is an application seeking condonation of delay of 3 days in filing the appeal. For the reasons given therein the application is allowed and the delay is condoned.

3. Application stands disposed of.

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4. This is an appeal preferred against the judgement and decree dated 25.03.2015, passed by the Additional District Judge-I, Karkardooma Courts, Delhi. By virtue of the impugned judgement the appellant's suit, which was initially filed as a summary suit, under Order 37 of the Code of Civil Procedure, 1908 (in short the CPC), which was later on converted into an ordinary suit, was dismissed.

5. Briefly, the case of the plaintiff, before the trial court, was that a loan in the sum of Rs. 3.10 lacs was sanctioned in favour of the respondent for

purchase of a Tata Safari vehicle, bearing registration no. DL 3C W-3967. As per the terms, according to the appellant, the loan amount had to be paid in 36 Equal Monthly Instalments (EMI). Each EMI was of a sum of Rs. 11,285/-.

5.1 The appellant claimed that the defendant had executed the necessary documents, which included the loan agreement and a promissory note. According to the appellant, since the respondent did not adhere to the financial discipline, a legal notice was issued to him, which is, dated 20.10.2009.

5.2 By the said legal notice, the loan was fore-closed and the entire loan amount was recalled. The respondent was, accordingly, called upon to pay the loan amount with interest and attendant charges.

6. It is in this background that the appellant says that the aforementioned suit was instituted against the respondent.

7. The respondent, in his written statement, broadly, took the defence that the signatures found on the loan agreement, as well as the loan application dated 28.04.2007 (Ex. C-1), were not his. It was also contended, that the loan amount was never received by him. Furthermore, the respondent claimed that the vehicle in issue was, in fact, purchased by the respondent from the previous owner, Ms Shashi Arora. For this purpose, cash receipt-cum-sale letter (Ex. DW-1/1) was produced and proved.

8. The trial court has returned the following findings of fact. First, that the loan amount was never received by the respondent. Second, that the cash receipt-cum-sale letter (Ex. DW-1/1) was proved by DW-2; who was a witness to the execution of the said document. Third, that the alleged loan amount was, in fact, even according to the appellant, disbursed to its Direct Selling Agent (DSA) and not to the respondent. Fourth, that the appellant

had not examined an expert witness to prove the signatures of the respondent on the loan documents.

9. Mr Mathur, learned counsel for the appellant, says that since the loan documents and other attendant documents were signed by the respondent, the finding returned by the trial court was perverse and deserves to be reversed. Further it was submitted by the learned counsel that the documents pertaining to the vehicle clearly indicated that the vehicle was hypothecated to the appellant.

10. After having considered the matter at some length, according to me, this is a unique case wherein the appellant, which is a bank, seeks to recover money from the respondent i.e. the purported borrower, without proving that the amount was actually received by him. During the course of the argument, Mr Mathur has conceded that the amount was disbursed by the appellant to its DSA. On being further queried, Mr Mathur candidly accepted that neither the DSA was impleaded as a party nor was he examined as a witness.

11. If, the stand taken by the appellant is to be believed, surely the DSA, in the very least, should have been examined which could have perhaps established that the amount received by him had actually been paid to the borrower i.e., the respondent. Ruefully no such step was taken by the appellant. This, according to me, is a fatal error, which, to my mind, has resulted in appellant's situation reaching such a pass. On the other hand, the respondent has proved the document (Ex. DW-1/1) via the testimony of DW-2.

11.1 This brings me to the argument advanced by Mr Mathur that not only the loan documents bore signatures of the respondent but also that the Registration Certificate (RC) pertaining to the subject vehicle indicated that

it was hypothecated to the appellant.

11.2 In my view, the submissions of the appellant made in this behalf have been correctly dealt with by the trial court by applying the principle of preponderance of probability. The trial court after weighing the evidence, accepted the stand of the respondent that after purchasing the subject vehicle directly from the vendor i.e. Ms Shashi Arora, he had applied for a loan to the appellant amounting to Rs. 2 lacs via, one, Mr Jain (i.e. the DSA) for the purposes of investing the money in his business, and that, Mr Jain (i.e. the DSA) took his signatures on certain papers which were not filled up and also collected copies of identity documents, as well as, the registration certificate book.

11.3 In my view, no fault can be found with the appreciation of the stand taken by the parties before the trial court, based on the evidence available on record.

12. In these circumstances, I am of the view that no interference is called for with the judgement of the trial court. Accordingly, the impugned judgement is sustained.

13. The appeal is, consequently, dismissed.

**RAJIV SHAKDHER, J**

**JULY 13, 2015**

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