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

+ RFA 471/2015

OM PRAKASH MAKHIJA

..... Appellant

Through: Mr. Subhash Tagra, Advocate

versus

MANOHAR LAL

..... Respondent

Through

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

ORDER

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21.07.2015

CM No.12615/2015 (Exemption)

1. Allowed subject to just exceptions.

RFA 471/2015 and CM No.12614/2015 (stay)

2. This is an appeal filed against the judgment and decree dated 30.03.2015, passed by the trial court. The facts pertaining to the case have been noted, in detail, in the trial court order. Therefore, for the present, I will be adverting only those facts which are necessary for the disposal of the instant appeal.

2.1 The respondent/plaintiff approached the trial court with an action for recovery of a loan which he had apparently, furnished to the appellant/defendant.

2.2 According to the respondent/plaintiff, the loan in the sum of Rs.6 Lakh was advanced by way of two cheques, bearing no.497945 and 497947. Both cheques, as averred, were dated 04.10.2005 and, were drawn on the

Oriental Bank of Commerce. The first cheque i.e. cheque No.497945 was drawn in the sum of Rs.5 Lakhs, while the other cheque i.e. cheque bearing no.497947 was, for a sum of Rs.1 Lakh (hereafter collectively referred to as the cheques).

2.3 The respondent/plaintiff further avers that demand for money was made in January 2008, which was avoided by the appellant/defendant; whereafter a legal notice dated 19.07.2008 was issued.

2.4 It is the case of the respondent/plaintiff that the said legal notice was served on 24.07.2008, and that, the appellant/defendant issued a reply to the same, which is dated 13.08.2008.

2.5 According to the respondent/plaintiff, in the reply to the legal notice, the defence taken was that the aforementioned cheques were issued towards payments, which he had to allegedly make against supplies of goods by the appellant/defendant.

2.6 The respondent/plaintiff being aggrieved, filed an action in the court for money advanced as loan, in which, a similar defence was set up by the appellant/defendant.

2.7 The appellant/defendant, in addition, also raised a defence of limitation, and that, there was no cause of action which arose qua him.

3. Accordingly, the trial court framed the following issues :-

- “..1. Whether the suit is barred by limitation? OPD
2. Whether the suit is without any cause of action? OPD
3. Whether the plaintiff purchased goods for Rs.6,12,443.80 from the defendant? OPD
4. Whether the plaintiff is entitled to a decree for the suit amount? OPP
5. Whether the plaintiff is entitled to any interest on the amount claimed. If so, at what rate and for what period?

OPP..”

4. The trial court by virtue of the impugned judgment has found all issues against the appellant/defendant. Consequently, the trial court has decreed the suit for a sum of Rs.6 Lakh alongwith interest at the rate of 9% p.a. (simple), commencing from the date of institution of the suit till realization.

5. This appeal, as indicated above, is preferred against the said judgment and decree.

6. The learned counsel for the appellant has submitted that the respondent/plaintiff has failed to prove his case, and that, the trial court failed to take note of the fact that there were several transactions between the parties qua which the respondent/plaintiff had issued cheques in the past to the appellant/defendant.

7. I have heard the learned counsel for the plaintiff and perused the record as well as the impugned judgment.

8. To be noted, the following facts are not disputed, before me :

(i). That the aforementioned cheques were issued by the respondent/plaintiff.

(ii). That monies reflected against the cheques were received by the appellant/defendant.

(iii). That the appellant/defendant was partially cross-examined, whereafter he did not present himself for further cross-examination, despite, several opportunities being given in that behalf by the trial court.

(iv). That the appellant/defendant did not adduce any evidence to substantiate his principal defence that the aforementioned cheques were

issued by the respondent/plaintiff against the supplies made by him.

8.1 Qua the aforementioned aspects, the trial court has returned findings of fact in paragraph 15 and 16 of the impugned judgment. For the sake of convenience, the same are extracted hereinafter :-

“..15. The defendant in his WS has admitted the receipt of two cheques amounting to Rs.6,00,000/- but he has failed to discharge the burden that the said cheques were issued towards the purchase of certain goods by the plaintiff. The defendant has stated in his WS that the plaintiff had purchased goods from him for a sum of Rs.6,12,443.80 and according to the defendant in lieu of the purchases so made by the plaintiff he had issued two cheques of Rs.6 lakh on 03.10.2005. The burden was on the defendant to prove that the cheques in question were given by the plaintiff towards the discharge of his liability for purchase of goods from the defendant.

16. The defendant tendered his evidence by way of affidavit on 10.07.2012. He was partly cross examined on 01.03.2013 and his further cross examination was deferred and the defendant thereafter was given several opportunities to lead his evidence but he failed to appear in the court and did not submit himself for further cross examination. So the Ld. Predecessor of his court closed the evidence of the defendant on 01.12.2014. The record of the case reveals that the defendant has not moved any application for re-opening of his evidence though he has been appearing in the court in person as is evident from the order sheets. This conduct of the defendant shows that he has not come to the court with clean hands. It is also not understood as to why he has not submitted himself for completing the cross examination though he kept on appearing in the court to prove his case. So in these circumstances the plaintiff has been able to prove that he had given the above mentioned two cheques to the defendant and when he demanded the amount the same was not returned by the defendant despite receipt of the notice Ex. PW1/A. This issue is, therefore, decided in favour of the plaintiff and against the

defendant...”.

(emphasis supplied)

8.2 In so far as the issue of limitation as concerned, the trial court noted that the aforementioned cheques in issue were issued on 04.10.2005, whereas the suit was filed on 03.10.2008. Accordingly, the trial court, in my view, quite correctly came to the conclusion that the suit was within limitation.

8.3 In so far as the plea of lack of cause of action was concerned, the same was also been dealt with, quite correctly, by the trial court, in that, since the respondent/plaintiff had issued cheques against which moneys were not repaid, and therefore, a cause of action arose in favour of the respondent/plaintiff. In my view, no fault can be found with the reasoning. in my view, was again correctly decided.

9. Having regard to the above, I find no merit in the appeal. The captioned appeal and the pending application are accordingly dismissed.

RAJIV SHAKDHER, J

JULY 21, 2015

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