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

+ RFA 621/2015

EATASAMUDDIN AHMED QURESHI Appellant

Through: Mr. Narender Singh and Mr. Sanjay Jha,
Advocates

versus

SYED IRSHAD ALI WASTI & ANR Respondents
Through

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

ORDER

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23.09.2015

CM No.20599/2015 (Exemption)

1. Allowed subject to just exceptions.

RFA 621/2015 and CM No.20600/2015 (condonation of day of 18
days in re-filing the appeal)

1. This is an appeal preferred against the judgment and decree dated 30.03.2015, passed by the learned ADJ (Central), Delhi.

2. Briefly, the facts of the case are as follows :-

2.1 The plaintiff filed a suit for recovery of a sum of Rs.3 Lakh alongwith gold ornaments, which were valued at Rs.1 Lakh against the respondents/defendants. In the suit, interest was also sought.

2.2 Respondent no.1 and 2 herein are the brother-in-law and the niece of the deceased wife of the appellant.

2.3 The appellant and his wife had a strained marital relationship. The wife of the appellant, who was known as Ms. Sayyeda Noor

Jahan, was suffering from heart disease and was diabetic for almost 10 years prior to her death. The fact that the appellant's wife was a heart patient is not in dispute.

2.4 It is, in fact, because of Ms. Sayyeda Noor Jahan's heart condition that, according to the appellant, she had shifted to the house of respondent no.1. The appellant's case is that since respondent no.1 had his residence on the ground floor, his wife shifted to respondent no.1's house.

2.5 The appellant also set up a case that on 19.05.2007, his wife had carried two bags comprising of clothes and jewellery with gold ornaments, such as, one set of gold bangles, weighing 24 grams; one pair of ear ring, weighing around 5 grams; two finger rings, weighing around 10 grams; and one complete set weighing, approximately, around 60 grams, to respondent no.1's house.

2.6 According to the appellant, this visit was made by his wife as she was to attend a wedding of her nephew. However, the appellant's wife suffered a heart attack on 23.05.2007, on account of which she died on the same day.

2.7 The appellant claims that his wife had withdrawn a sum of Rs.1 Lakh, on 12.02.2007, and another sum amounting to Rs.2 Lakh, on 19.02.2007, albeit via self cheques.

2.8 The trial court has, however, disbelieved the case of the appellant on both counts. In this behalf, the trial court has returned the following findings of facts, amongst others :-

(i). First, that there is no evidence produced by the appellant to the effect that his wife had left the house on 19.05.2007 with two bags, as

alleged, with jewellery contained therein.

(ii). No evidence was placed on record by the appellant that the jewellery said to be in possession of his wife was procured by him or by his wife, and that, she was in possession of the said jewellery on the given date.

(iii). In so far as the withdrawal of amounts on 12.02.2007 and 19.02.2007 are concerned, the only document that the appellant has placed on record were blank photocopies of the bank passbook (Mark A). However, the original bank passbook was not placed on record.

(iv). In his testimony, the appellant has accepted the fact that the original bank passbook including other documents of the deceased were in his possession.

(v). The appellant did not summon any bank official to prove that the aforementioned amount was withdrawn from the account of the deceased.

2.8 Based on the aforesaid findings, the trial court dismissed the suit.

3. Mr. Singh, who appears for the appellant says that when an Indian lady attends a wedding, there is an “assumption” that she normally would carry her jewellery items. The learned counsel for the appellant apart from this broad, unsubstantiated, submission has not been able to draw my attention to any material which would establish that the findings returned by the trial court were erroneous. As a matter of fact, the learned counsel for the appellant sought to rely on the cross-examination of respondent no.1 which reads as under :-

“..It is correct that I am doing nothing nor I am running any shop at Meena Bazar. It is correct that in the month of May,

2007, wife of the plaintiff joined me as she had to attend a marriage at Budni, Bhopal on 28.05.2007. It is correct that she came to my house on 19.05.2007 but I cannot say what luggage was there with her. I cannot say that she brought two suitcases of clothes and ornaments. It is also correct that she died due to heart attack on 23.05.2007. I have not informed the plaintiff with regard to the death of his wife. The plaintiff was present at the last ceremony. I have not returned any luggage of the deceased wife of the plaintiff as she has not brought any luggage with her. It is wrong to suggest that the plaintiff asked me for return of luggage of the deceased wife of the plaintiff. I do not know in whose possession the luggage of the deceased wife of the plaintiff. I cannot say whether Ghazala Jabin has ever received any notice issued on behalf of the plaintiff. It is correct that the plaintiff used to get treat his wife through doctors. The deceased wife of the plaintiff was living with me about one and half year before her death. I do not remember the date since when the deceased wife of the plaintiff came to my house. I cannot say that she came to my house on 07.12.2006 and remained there till 20.04.2007...”

(emphasis is mine)

3.1 Based on the said testimony, it is argued by the counsel for the appellant that respondent no.1 has accepted that he did not return the luggage of the deceased. According to me, the learned counsel for the appellant has misread the testimony of respondent no.1. Respondent no.1 has clearly stated that he did not return any luggage of the appellant’s wife as she had not brought any luggage with her.

4. Having regard to the aforesaid, I find no merit in the appeal. The appeal and the pending application are accordingly, dismissed.

RAJIV SHAKDHER, J

SEPTEMBER 23, 2015

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