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

+ RFA 781/2015

RAJESH JOSHI

..... Appellant

Through: Mr. Prakash Varma, Mr. Vikash
Chandra and Mr. D.M. Sinha, Advocates

versus

SUMIT GUPTA

..... Respondent

Through

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

ORDER

% **20.11.2015**

CM No.27628/2015 (Exemption)

1. Allowed subject to just exceptions.

RFA 781/2015 and CM No.27627/2015 (stay) and CM No.27626/2015
(condonation of delay of 448 days in filing the appeal)

2. This appeal is not maintainable in view of the fact that certified copy of the judgment has not been filed. Concededly, the judgment was delivered on 30.05.2014. Provisions of Rule 1 of Order 41 of the Code of Civil Procedure, 1908 (in short CPC) make that eminently clear. [See ***Jagat Dhish Bhargava Vs. Jawahar Lal Bhargava and Ors., (1961) 2 SCR 918***].

2.1 Though the judgment passed by the Supreme Court in ***Jagat Dhish Bhargava*** case was rendered prior to the amendment made to Order 41 Rule 1 of the CPC with effect from 01.07.2002, it would be applicable as the amendment only deletes the requirement of filing a decree with the appeal. After the amendment, the appeal is maintainable, even if, only the certified

copy of the impugned judgment is filed. In this case, admittedly, the appellant has not filed a certified copy of the impugned judgment.

2.2 The appellant seems to have approached this court only after execution proceedings have been taken out. The appellant avers that an application for issuance of certified copy of the impugned judgment was filed only on 18.11.2015.

2.3 Curiously, the appellant has failed to file even the application for leave to defend, which was evidently filed, before the trial court.

2.4 The trial court has decreed the suit of the respondent on the ground that no triable issues arose for consideration in the matter. The appellant had taken the defence that the cheque in the sum of Rs.5 Lakhs was issued to the respondent to purchase interest in a Non Banking Financial Company (in short the NBFC). In the impugned judgment, the trial court has noted that this defence was moonshine as not even the name of the NBFC was put forth by the appellant.

2.5 Furthermore, the trial court notes that the respondent had served a legal notice dated 14.10.2011 on the appellant for return of loan of Rs.5 Lakh for which the said cheque was issued. This notice was neither replied nor repudiated. The learned counsel for the appellant says that notice was never served on the appellant.

3. I have put to the learned counsel for the appellant as to whether there is any ground taken in the appeal which would indicate that despite the fact that this assertion was made in the leave to defend application, the trial court ruled otherwise.

3.1 The learned counsel for the appellant has not been able to draw my

attention to any ground in this regard.

4. In these circumstances, I am of the view that no interference is called for with the impugned judgment. The appeal and the pending applications are dismissed accordingly.

RAJIV SHAKDHER, J

NOVEMBER 20, 2015

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