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IN THE HIGH COURT OF DELHI AT NEW DELHI

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RSA No.328/2014

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26th September, 2016

SH. NARESH KUMAR

..... Appellant

Through: Appellant in person.

versus

SH. RAVINDER KUMAR

..... Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

C.M. Nos.35478/2016 (restoration), 35479/2016 (condonation of delay) & RSA No.328/2014

1. These applications for restoration and condonation of delay along with the main Regular Second Appeal were argued in the morning by the counsel Mr. Saurabh Kansal. After arguments, it was found that neither the applications nor the main RSA had any substance and therefore the appellant who was present in person took time for giving instructions to his counsel as to whether the appeal was to be pressed on merits or the appellant does not press the applications and the appellant should only seek refund of Rs.25,000/- deposited as pre-conditional costs when the appeal was dismissed vide Order dated 11.2.2015. The matter was passed over.

2. After a pass over the appellant appears in person and states that a judgment be passed on merits.

3. So far as the application for condonation of delay is concerned, it is seen that there is no sufficient reason given for condonation of delay of 552 days in filing of the application for restoration because it is not believable that appellant would not have contacted his counsel right from 11.2.2015 till March, 2016 when he received the notice of the execution proceedings. Merely filing a complaint to the Bar Council of India will not absolve the appellant of not furnishing the requisite explanation for delay and which is a large delay of 552 days. Accordingly, the applications for restoration and condonation of delay are liable to be dismissed because there are no sufficient reasons for condonation of delay and restoration. However, even on merits I have heard the counsel for the appellant.

4. Appellant is the defendant in the trial court. The subject suit was filed by the respondent/plaintiff for recovery of Rs.2 lacs given as loan to the appellant/defendant. Appellant/defendant admitted that he received the loan but the defence was that the loan was repaid. However the appellant/defendant failed to file any proof whatsoever of the loan having been repaid and accordingly this issue was decided against the appellant/defendant by the courts below. Trial court, in this regard, has made the following salient observations:-

“10. ISSUE No.1: Whether the plaintiff is entitled for decree of recovery of Rs.2,00,000/- along with interest and pendente lite interest on the principle amount @ 24 % p.a. as prayed for in the plaint? The case of the plaintiff is that he advanced a personal loan of Rs 2 Lac to the defendant which the defendant agreed to return within two years with interest. The plaintiff has duly proved the pro-note & written acknowledgment as Ex PW1/1 & 2. The defendant has not disputed the acceptance of loan from the plaintiff and during course of his cross examination admitted that he took a loan of Rs 2 lac from the plaintiff for period of one year in September, 2009. The defense put forth by the defendant is that he has already re-paid the loan amount taken by him from the plaintiff.

11. However, in his affidavit Ex. D1, the defendant has testified that he has returned the loan amount to plaintiff on 03.05.2012 after he sold the property of his wife Smt. Madhu Rani. However, the defendant has not placed any document on record to prove that he has sold the property of his wife to re-pay the loan. The defendant has also not produced any receipt showing the payment given by him to the plaintiff on 03.05.2012. In absence of any proof of payment by the defendant to the plaintiff it cannot be believed that the loan taken by the defendant stands re-paid.

12. The defendant has argued that the plaintiff has failed to disclose from which source he managed Rs 2 lac, the plaintiff did not reflect the payment of loan in his ITR and he is habit of filing false & frivolous cases against numerous persons. Therefore, the plaintiff is not entitled to nay claim against the defendant. As stated above, the defendant has admitted to have taken a loan of Rs 2 Lac as such the non declaration by the plaintiff of source of the loan amount or not mentioning the amount in his ITR would not affect the merits of the case. The defendant although has alleged that the plaintiff is in habit of filing false & frivolous cases against numerous persons but no evidence has been brought by the defendant to prove this allegation. There is also no evidence on record that the suit against filed defendant is false. Keeping in view of the fact that the defendant has admitted to have taken the loan of Rs 2 lac from the plaintiff and has failed to prove that he has re-paid the of loan back to the plaintiff. Therefore, it is held that the plaintiff is entitled for the recovery of the loan amount from the defendant.

13. The plaintiff has claimed an interest @ 24% p.a. on the loan amount. The fact that the plaintiff advanced a personal loan to the defendant and the interest rates in last few years have fallen considerably, the ends of justice would be met if the plaintiff is awarded pendente lite and future interest @ 8 % p.a. from September, 2009 (from the date of the loan) till the realization of the decreetal amount. Accordingly, the issue stands answered in favor of the plaintiff.

14. Relief: In the light of the findings on Issue no. 1, the suit of the plaintiff stands decreed in favor of the plaintiff and against the defendant in the sum of Rs.2,00,000/- (Rupees Two Lacs Only) along with pendent-lite & future interest @ 8% per annum from September, 2009 till realization of the suit amount. Costs of the suit are also awarded in favor of the plaintiff. File be consigned to Record Room.”
(underlining added)

5. Before the first appellate court, an additional issue was raised on behalf of the appellant/defendant as to the suit being barred because of the respondent/plaintiff having not granted the loan as a friendly loan and the respondent/plaintiff did not have a licence for the money lending activities which is required as per the Punjab Registration of Money-Lender's Act, 1938. The first appellate court rejected this argument by observing that neither was this plea of suit being barred under the Punjab Registration of Money-Lender's Act taken up in the trial court and even if it is taken as a legal plea, giving of occasional loan is not found to be barred under this Act.

6. In fact, I would like to note that this plea of suit being barred under the Punjab Registration of Money-Lender's Act was not a legal plea as held by the first appellate court and the same is a factual plea. On this factual plea the appellant/defendant had to lead evidence that the respondent/plaintiff was engaged in the business and commerce of granting loans. Once this is a factual defence, the first appellate court could not allow the same to be argued. It is noted that no pleading was raised to this effect by the appellant/defendant by stating so in the written statement, no such issue framed and thus no evidence was led by the parties on this aspect. Therefore, this objection of the appellant/defendant is also misconceived and rejected.

7. In view of the above, there is no merit either in the applications for restoration or condonation of delay or for that matter even on merits in the main Regular Second Appeal, and therefore the same are dismissed.

SEPTEMBER 26, 2016
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VALMIKI J. MEHTA, J

