

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

+ **RSA No. 17/2017**

% **25th April, 2017**

NIJAMUDDIN MANSOORI Appellant

Through: Mr.P.Chakraborty, Advocate.

versus

GIRISH CHAND GUPTA Respondent

Through: Mr.Ansar Ahmad, Advocate.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

CM No. 1883/2017 (for condonation of delay)

For the reasons stated in the application, the delay of 71 days in filing the appeal is condoned.

CM stands disposed of.

RSA No. 17/2017 and CM No. 1881/2017 (Stay)

1. This regular second appeal under Section 100 of the Code of Civil Procedure, 1908 (CPC) is filed by the appellant/defendant impugning the concurrent judgments of the courts below; of the Trial Court dated 14.10.2014 and of the First Appellate Court dated 29.7.2016; by which the courts below have dismissed the leave to

defend application filed by the appellant/defendant and decreed the suit for a sum of Rs. 1,30,000/- along with interest @ 2% per month from the date of loan being 9.10.2009 till payment.

2. The subject suit was filed by the respondent/plaintiff for recovery of Rs. 1,30,000/- under Order XXXVII CPC on the ground that the respondent/plaintiff gave a friendly loan of Rs. 1,30,000/- to the appellant/defendant on 9.10.2009. It is further pleaded that respondent/plaintiff withdrew the said amount from his bank account and gave this amount to the appellant/defendant and at the time of the said transaction, the appellant/defendant handed over property documents of his house bearing No. 31, Khasra No. 447, Gurunanak Nagar, Bhalaswa Dairy, Delhi – 110042 to secure the loan and also given an assurance that loan amount would be repaid within a period of six months. The appellant/defendant however failed to repay the loan amount in spite of repeated requests by the respondent/plaintiff and accordingly appellant/defendant gave a cheque bearing no. 874881 for an amount of Rs. 1,30,000/- and asked the respondent/plaintiff to present the same for encashment in the first week of November 2011. When on 5.11.2011, the respondent/plaintiff presented the said cheque for encashment the same was returned back dishonoured with the remarks “Kindly contact drawer or drawee bank and please present

again”. Subject suit thereafter was filed by the respondent/plaintiff after serving a legal notice dated 21.11.2011 which failed to yield the desired result.

3. It is noted that the courts below have rightly applied the principles of grant or denial of leave to defend in terms of judgment of the Supreme Court in the case of *M/s. Machalec Engineering & Manufacturers v. M/s. Basic Equipment Corporation, AIR 1977 SC 577* and which judgment is referred to in para 7 of the judgment of the trial court. The trial court has given the following valid reasons for decreeing of the suit and which are contained in paras 9 to 11 of its judgment and which paras read as under:-

“9. Applying the aforesaid principles of law in the present case, I am of the considered opinion that no triable issue has been raised by the defendant. The contention of the defendant as he had given the original property documents to one Sh. Shakeel Ahmed as a security to provide job to the son of the defendant is highly untenable as it is highly unlikely that original property documents are handed over to a person to secure a job. Further, the defendant has stated that the said Sh. Shakeel Ahmed failed to provide any job for the son of the defendant and moreover he has not even returned the original property documents to the defendant creates a serious dent on the veracity of this contention of the defendant especially in view of the fact that no legal action has been taken by the defendant against the said Sh. Shakeel Ahmed to recover the original property documents. Further, the contention of the defendant that the alleged cheque bearing No. 878441 and the pronote dated 09.10.2009 are forged and fabricated is also meritless as a bare perusal of the signatures on the said cheque, the pro-note and the vakalatnama filed on behalf of the defendant in the present case, clearly reveals that the signatures are the same. Further, as no complaint has been made with regard to the forged signatures on the cheque and the pro-note casts a serious doubt upon the contention of the defendant. Further, the defendant has stated that the plaintiff and defendant are strangers which further casts a doubt over the version of the defendant as there is no explanation given whatsoever that how and why the plaintiff came in knowledge of the signatures of the defendant and then misused the same.

The contention of the defendant that the plaintiff has failed to place on record any loan agreement deserves rejection on the ground that the pro-note dated 09.10.2009 has been placed on record by the plaintiff and it was never the case of the plaintiff that any loan agreement was entered into by the parties.

10. In view of the above discussion, this Court is of the opinion that the defendant have failed to raise any triable issues and the defence raised by the defendant is moonshine and illusory. The Court is convinced that there are no ground to grant the leave to defend to the defendant. The application for leave to defend of the defendant is therefore, dismissed and under the provisions of Order 37 Rules 3(6) (a) the plaintiff is entitled to judgment forthwith.

11. The cause of action to file the present suit accrued in favour of the plaintiff on 09.10.2009 when an amount of Rs. 1,30,000/- was given as loan to the defendant, on 08.11.2011 when the alleged cheque was returned dishonored and subsequently arose on 03.12.2011 when the legal notice was served upon the defendant. The present suit has been filed on 07.01.2012. The suit is, therefore, within limitation.” (underlining added)

4. In my opinion, the trial court has committed no illegality or perversity by its impugned judgment inasmuch as the trial court has noted that admittedly the cheque has been dishonoured. Trial court also notes that appellant/defendant had executed a pro-note dated 9.10.2009 and that the defence of the pro-note being forged and fabricated is meaningless because the signatures on the cheque and pro-note and the vakalatnama filed on behalf of the appellant/defendant show that all the signatures are the same. Also, the trial court has rightly noted that parties are strangers, and therefore, there was no valid explanation as to how the respondent/plaintiff would have got the signatures of the appellant/defendant. Suit was also rightly held to be within limitation as the suit was instituted on 7.1.2012 and the cheque was dishonoured on 8.11.2011.

5. The first appellate court has upheld the findings and conclusions of the trial court.

6. At this stage, I may note that the courts below have wrongly granted an exorbitant interest of 2% per month and in the facts of the present case the entitlement of the respondent/plaintiff is only to the statutory rate of interest being 18% per annum simple in view of Section 80 of the Negotiable Instrument Act, 1881. To this extent therefore the impugned judgments and decrees of the courts below are modified by ordering that the respondent/plaintiff will only be paid interest at 18% per annum simple from the date of grant of loan as mentioned in the judgment of the trial court.

7. Subject to the aforesaid limited rate of interest granted to appellant/defendant, no substantial question of law arises, and the regular second appeal is therefore dismissed.

APRIL 25, 2017
Godara/ib

VALMIKI J. MEHTA, J