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

+ RFA 278/2017 & CMs 9577-78/2017

DONG JAE OH

..... Appellant

Through: Mr. Pradeep Yadav, Advocate.

versus

M/S I.K POLYMERS (NORTH) PVT LTD & ORS Respondents

Through: None.

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

ORDER

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10.03.2017

1. The appellant/plaintiff is aggrieved by the judgment dated 01.9.2016, passed by the learned trial court dismissing his suit for recovery of Rs.10 lakhs instituted against the respondent.

2. The relevant facts germane for deciding the present appeal are that the appellant/plaintiff, as the Managing Director of M/s Samwon Precision Mould Mfg. Pvt. Ltd. (hereinafter referred to as '**the Company**'), used to purchase goods from the respondent No.1/defendant No.1 Company from time to time. Respondents No.2 and 3 are the Directors of the respondent No.1/Company. The appellant/plaintiff has pleaded that in the month of October, 2011 the respondents No.2 and 3 had approached him with a request to lend them some money with an assurance that they would give him a high rate of interest on the loan amount. It was orally agreed that the period of investment would be six months and the interest payable on the loan amount was 18% per annum. Relying on the said oral assurance given by the respondents/defendants, the

appellant/plaintiff issued cheque No. 511237 dated 09.11.2011 for a sum of Rs.10 lakhs, in favour of the respondent No.1/Company drawn on Deutsche Bank, New Delhi. The said cheque was duly encashed. After a period of six months, when the appellant/plaintiff approached the respondents/defendants for return of the loan amount with interest, they sought more time and kept on dilly dallying. In the meantime, the appellant/plaintiff claimed that he came to know that the respondents/defendants had taken loans from other persons as well and they were in default. Claiming that the respondents/defendants had failed to pay back the sum of Rs.10 lakhs advanced by the appellant/plaintiff alongwith interest, he served on them a legal notice dated 28.6.2013 and thereafter, instituted the present suit on 26.07.2013.

3. On being served with the summons, the respondents/defendants contested the suit and filed a written statement. They stated that the Company wherein the appellant/plaintiff was working as a Managing Director, used to purchase goods worth crores of rupees from them and they used to receive on-account payments for the price of the said goods. During the year 2011-12 and 2012-13, the said Company had suffered a serious financial crisis.

4. On 09.11.2011, the Company wrote a letter to the respondent No.1/Company, enclosing therewith a cheque for a sum of Rs.10 lakhs issued by the appellant/plaintiff from his personal account and requested inter alia that the said amount be adjusted as an on account payment, towards part discharge of the liability of the Company. On the request of the appellant and the other Directors of the Company, the respondents/defendants encashed the aforesaid cheque and gave due adjustment to the Company in their ledger account. The respondents stated that after adjusting the sum of Rs.10 lakhs, as on 10.11.2011, the Company owed a sum of Rs.99,30,545.44 to them.

5. It was further pleaded that admitting their liability to pay the outstanding amounts, the appellant and the other Directors of the Company issued eight cheques amounting to Rs.78,57,431/- in favour of the respondents/defendants towards discharge of their liability, between April, 2012 to June, 2012. All the aforesaid cheques on being presented by the respondents/defendants, were dishonoured in terms of the Return Memo dated 21.6.2012. This had compelled the respondents/defendants to serve a legal notice on the appellant/plaintiff, the other Directors and the Company, who then approached the respondents with a written proposal dated 26.7.2012, reiterating that the Company was passing through a tough financial situation and was unable to release payments on time. They offered a proposal to pay a sum of Rs.64,01,510/- to the respondents/defendants in nine monthly installments, for adjusting the outstanding payment of Rs.78,57,431/-.

6. However, neither the appellant, nor the Company, or the other Directors abided by the assurance given to the respondents/defendants, who had to file a complaint case against them under Section 138 of the N.I. Act. As one of the accused in the said case, the appellant was admitted to bail by the learned M.M. on 17.1.2013 and he was directed not to leave the country without obtaining the prior permission of the court. Finally, the said dispute was settled between the parties for a sum of Rs.64,01,510/- with an undertaking that the Company shall pay the outstanding amount of Rs.14,55,921/- to the respondents/defendants.

7. In terms of the aforesaid settlement, the appellant and the other Directors of the Company paid a sum of Rs.21 lakhs to the respondents/defendants before the learned M.M. on 27.2.2013. Thus, the respondents/defendants categorically denied that they owed any amount whatsoever to the appellant and further pointed out that there was no need for them to approach the

appellant/plaintiff for a loan when the turnover of the respondent No.1/Company in the year 2011-12, was in crores of rupees.

8. After issues were framed in the suit on 27.5.2014, the parties were directed to lead evidence. The appellant/plaintiff examined himself as PW-1 and filed his evidence by way of affidavit (Ex.PW-1/A). On their part, the respondents/defendants examined respondent No.2 as DW-1 who filed his evidence by way of affidavit (Ex.DW-1/A).

9. On examining the pleadings in the suit, the documents and the evidence produced by the parties, the learned trial court dismissed the suit instituted by the appellant holding inter alia that he had failed to prove that an amount of Rs.10 lakhs was given by him to the respondents as a personal loan or that any interest was payable to him on the said amount. Aggrieved by the aforesaid judgment, the appellant/plaintiff has filed the present appeal.

10. The singular plea taken by learned counsel for the appellant is that the trial court has erred in placing reliance on the letter dated 09.11.2011 addressed by M/s Samwon Precision Mould Mfg. Pvt. Ltd. to the respondents/defendants, which forms the basis of turning down the claim of the appellant. He contends that the cheque in question was issued by the appellant from his personal savings account and ought to be treated as a loan repayable by the respondents with interest, irrespective of the contents of the aforesaid letter.

11. The Court has heard the learned counsel for the appellant and on perusing the impugned judgment, is of the opinion that there is no illegality, arbitrariness or infirmity therein, for interference. The evidence brought on record shows that the appellant/plaintiff had failed to examine any witness or file any documents to corroborate his version that he had extended an interest bearing loan of Rs.10 lakhs to the respondent No.1/Company.

12. On the other hand, the respondents had filed the letter dated 09.11.2011 written to them by the Company wherein the appellant was working on the post of Managing Director (Ex.DW1/3). The said letter stated *inter alia* that a sum of Rs.10 lakhs was being paid to the respondents from the personal savings account of the appellant/plaintiff towards discharge of the liability of the Company, as it was facing a severe financial crunch.

13. The appellant/plaintiff miserably failed to rebut the aforesaid document; nor was he able to elicit anything material from DW-1 during his cross examination, for throwing any shadow of doubt on the said letter. Further, the respondents have filed certified copies of the entire proceedings of the complaint case filed by them against the Company, the appellant/plaintiff and the other Directors under Section 138 of NI Act. The said documents have been referred to and dealt with at some length in para 27 of the impugned judgment wherein the learned trial court has observed that the complaint case was settled between the parties after the accused persons including the appellant herein had paid a sum of Rs.21 lakhs to the respondents. Nowhere in the said proceedings did the appellant take a plea that he had extended a personal loan to the respondent/company and that they had admitted the said liability and agreed to pay back the alleged loan amount to him. All the aforesaid facts and circumstances lends credence to the version of the respondents that the appellant had issued a cheque for Rs.10 lakh from his personal account in favour of the respondent No.1/Company, but the said payment was in part discharge of the amounts due and payable by his Company towards the price of the goods purchased from the respondents and the said cheque was issued by him because the Company was in financial distress at that time.

14. On a conspectus of the pleadings of the parties and the evidence brought on record, it has to be held that the version of the appellant that he had advanced a personal loan of Rs.10 lakhs to the respondent No.1/Company, remains unsubstantiated. The said version has been conclusively demolished by the respondents/defendants and rightly rejected by the learned trial court as improbable and unbelievable. As a result, the present appeal fails and is accordingly dismissed in *limine* along with the pending applications.

MARCH 10, 2017
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HIMA KOHLI, J

