

* IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on : October 31st, 2017

+ RFA 12/2009

GAJRAJ SINGH

..... Appellant

Through Mr.Bani Singh, Advocate.

versus

RAJBIR SINGH DHULL & ORS

..... Respondent

Through None.

CORAM:

HON'BLE MR. JUSTICE P.S.TEJI

JUDGMENT

P.S.TEJI, J.

1. The present appeal has been filed by the appellant against the judgment and decree dated 02.08.2008 passed by the learned Additional District Judge, Delhi whereby the suit filed by the plaintiff/respondent for recovery of Rs 4,00,000/- as principal amount with interest of Rs.50,000/- @ 18 % per month, total amounting to Rs. 5,50,000/- had been decreed in favour of the plaintiff /respondent and against the defendants/appellant.

2. The facts enumerating from the plaint filed before the Court below are that the plaintiff/respondent no.1 had filed a summary

suit under Order 37 CPC alleging therein that defendant no.1 was a finance company and defendant no.2 to 4 were its directors whereas defendant no.5 to 8 were its active members who were managing all the affairs of defendant no. 1 firm. They induced the plaintiff/respondent no. 1 to invest money in their company in order to earn interest @18% per month. The plaintiff/respondent No.1 invested his hard earned money Rs. 4,83,000/- on 26.12.2003 with defendant no.1 by making a cash payment against which defendant no.1 issued cash certificate No. 001862 having maturity dated 26.06.2004 and was assured that he will get full amount with interest on its maturity. In May 2004, the plaintiff/respondent no. 1 reminded the defendants for payment of full amount but the defendants/respondent no.2 expressed their inability to pay the entire amount on maturity but agreed to pay only a part of the matured amount and forced the plaintiff/respondent no. 1 to accept Rs. 83,000/- with promise to repay the amount of Rs.4 lacs with 18% per month interest within a short span of time. However the defendants/ respondent no.2 failed to make the payment of outstanding amount and the case FIR No.93/05 under Section 406/409/420/120B IPC was registered and the case is still pending before the Ld. ACMM at Rohini Court, Delhi.

3. Summons for appearance were issued to the defendants including the appellant-herein. No appearance was filed on behalf of defendant no.1, 3, 4, 6 & 7 despite service of summons. Defendant no.2 & 5 had refused summons. An application seeking leave to defend was filed on behalf of defendant no.8/appellant in which it was

alleged that he was not the active member of the defendant no.1 company and the suit was barred by limitation. There was no cause of action against him nor was he liable to pay any money to the plaintiff. He denied all allegations of the plaintiff/respondent.

4. The Court below dismissed the leave to defend application of the appellant/defendant no.8 and decreed the suit in favour of the plaintiff/respondent no.1 against all the defendants for Rs.4,00,000/- with cost and interest @ 18% per annum from 26.04.2004, pendent lite as well as future till realization. All the defendants have been directed to pay the amount severally and jointly. Feeling aggrieved by the judgment and decree in the present suit, the present appeal has been filed.

5. The main contention of the appellant is that the trial court has failed to appreciate the fact that there is no document on record against the appellant which gives a cause of action the plaintiff/Respondent no.1 to file a suit under Order 37 CPC against the appellant. Further, the learned Trial Court has erred in law while holding that the appellant was actively involved in the inducement of plaintiff on account of which the plaintiff invested the money with defendant no.1-company. It is submitted that mere summoning to face trial u/s 420 read with section 120B cannot be treated as a document under Order 31 Rule 1. Further, the Ld. Trial Court has failed to appreciate that several triable issues arise so far as the present appellant is concerned. It is also submitted that there was no cause of action available to Respondent No.1 to file the suit against the

appellant. Moreover, there is nothing on record which shows that the appellant has ever induced respondent no.1 to enter into the alleged transaction with Respondent No.2.

6. On the other hand, the case of the respondent is that FIR No. 193/2005 under Section 406/409/420/120B IPC has been registered against all the defendants including the defendant/appellant Gajraj Singh since he was actively involved in inducing the general public including the plaintiff with the defendant no.1. It is also the case of the plaintiff/respondent that cash certificate issued by defendant no.1- company in favour of plaintiff/respondent no.1 is on record and defendant no.2 to 4 were its directors and defendant no.5 to 8 were active members who induced the plaintiff/respondent no. 1 to invest the money with defendant no. 1/appellant and the defendants being Directors/members are liable to pay the money due towards them.

7. I have heard the counsel for the appellant and have gone through the documents and material available on record.

8. There is no dispute that the defendant no.1-company had issued the cash certificate dated on 26.12.2003 for Rs.4,83,000/- in favour of the plaintiff/respondent no.1 and since defendant no.5 to 8 are active members of the company who had induced the plaintiff/respondent no.1 to invest the money, therefore, the appellant is also liable in that capacity. Furthermore, the copy of the charge sheet with respect to FIR no.193/2005 under Section 406/409/420/120B IPC shows that the appellant Gajraj Singh has also

been summoned to face trial for the offence under Section 420 r/w Section 120B IPC on the basis of material on record which clearly shows that appellant/defendant no. 8 was actively involved in inducement of plaintiff/respondent no.1 on account of which the plaintiff invested his money with the defendant no.1. Also, the cash certificate issued by defendant no.1 dated 26.12.2003 is on record and it has come on record that defendant no.2 to 4 were its directors and defendant no.5 to 8 were active members who induced the plaintiff to invest money. Apart from the appellant/ defendant no.8, no other Director or active member i.e. defendant no.2 to 7 came before the Court to rebut the claim of the plaintiff/respondent no.1 that they did not owe any money to the plaintiff/respondent no.1.

9. Apparently, the appellant/defendant no. 8 has cheated the plaintiff/respondent no.1 whereby all the hard earned money of the plaintiff had gone waste and nothing apart from Rs.83,000/- has been reimbursed. The appellant/defendant no. 8 does not have any right to trash plaintiff's hard earned money. Since the suit filed by the plaintiff/respondent no.1 was a summary suit based on admitted documents and no triable issue had arisen, the Court below had power and jurisdiction to decree the same in favour of the plaintiff.

10. In view of the above discussion, this Court is of the considered opinion that there is no discrepancy in the judgment by the Court below in favor of the plaintiff and against the defendants

including the appellant. There is no error in the judgment and decree passed by the court below and the same is accordingly upheld.

11. Consequently, the present appeal is dismissed.

(P.S.TEJI)
JUDGE

OCTOBER 31, 2017
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HIGH COURT OF DELHI



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