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

\+ **RSA No. 137/2017**

% **12th May, 2017**

SURESH CHANCHAL ..... Appellant

Through: Mr. Kshitij Kumar, Advocate.

versus

OM PRAKASH PAROCHA & ORS. ..... Respondents

CORAM:
HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

C.M. Appl. No. 17825/2017 (for exemption)

Exemption allowed, subject to all just exceptions.

C.M. stands disposed of.

RSA No. 137/2017 and C.M. Appl. No. 17824/2017 (for stay)

1. This Regular Second Appeal under Section 100 of the Code of Civil Procedure, 1908 (CPC) is filed by the defendant no. 1 in the suit, against the concurrent judgments of the courts below; of the Trial Court dated 25.9.2010 and the First Appellate Court dated 28.1.2017; whereby the suit for recovery of a sum of Rs.1,15,600/- along with interest has been decreed for a limited sum of Rs.26,000/-

along with interest at the rate of 10% per annum. I note that the suit was filed with respect to different amounts under different schemes propounded by the defendants in the suit, appellant being the defendant no. 1 in the suit, and the suit with respect to most of the amounts claimed have been dismissed on the ground of plaintiff's suit being hit by the provision of the Benami Transactions Act. The suit decreed in favour of the respondent no. 1/plaintiff for a sum of Rs.26,000/- is only with respect to the amount deposited by the respondent no. 1/plaintiff of Rs.1,000/- per month in the Adarsh Lucky Scheme propounded by the defendants including the appellant.

2. There were two main issues before the trial court, and which have also been urged before this Court and which are with respect to whether firstly the appellant was the propounder of the Adarsh Lucky Scheme and secondly as to whether the respondent no.1/plaintiff had deposited any money in the Adarsh Lucky Scheme. These aspects have been held in favour of the respondent no.1/plaintiff by the trial court in terms of paras 15 and 16 of its judgment and which read as under:-

> "15. Now only question left to be seen is as to whether the plaintiff is able to prove that he had made the payment @ Rs.1,000/- per month until 15.04.2008 vide Adarsh Lucky scheme Ex Pw-1/2. It is already proved in the light of my findings on issue no.1 that defendant no. 1 is the proprietor of M/s Adarsh Lucky Scheme. <u>Admittedly, the plaintiff has not filed on record any document to show that he had made the payment of Rs.1,000/-</u>

per month till 11.04.2008 vide scheme Ex.Pw-1/2. The plaintiff could not have filed on record the receipt of payment as receipt of payment was not being issued to by the defendant as deposed by the plaintiff. The fact of non-issuance of receipt is further corroborated by the evidence of Defendant no. 5 Sh. Yogender Singh, who has deposed that in the Naraina village people deposited the amount in the committee without any receipt. Therefore the defendant's own witness has corroborated the testimony of plaintiff that receipts for payment was being issued in the area of village Naraina. The present case also pertains to village Naraina, therefore, testimony of the plaintiff that receipts were not being issued is believable.

16. The fact that the plaintiff had deposited Rs.1,000/- per month under the scheme of M/s Adarsh Lucky Scheme dated 11.03.2006 till 15.04.2008 is proved by the fact that defendant had not produced on record the bank statement of defendant no. 2 Manju Chanchal. It was specifically averred in the para-1 of the plaint by the plaintiff that amount was contributed in the account of defendant no. 2 Manju Chanchal. In the cross-examination of DW-1, Suresh Chanchal, he admitted that his wife Manju Chanchal was having a saving account for the past 10-15 years. DW-1 was directed by the Ld. Predecessor of this court, to produce the details of the bank account of himself and his wife, defendant no. 2. The defendant no. 1, Suresh Chand only produced the record pertaining to his account and the record with regard to his wife's account that is defendant no. 2 was not produced on record despite being in existence. The production of record of the Saving Bank Account of the Manju Chanchal that is wife of defendant no. 1 would have proved the deposit of money by the plaintiff. The production of bank account of defendant no. 2 Manju Chanchal was the sole documentary evidence with regard to transaction in question. However, the non-production of same by the defendant no. 1 Suresh Chanchal will make this court raise an adverse inference against defendant no. 1 that in case the details of the account of defendant no. 2 was produced, the same would not have been favourable to his defence. The plaintiff has also proved on record that defendant no. 1 Suresh Chanchal had invested the sum of Rs.48.5 lacs with M/s A.K. Electrical vide agreement dated 18.05.2005 Ex.Pw-1/4. The proprietor of M/s A.K. Electrical vide its letter dated 06.07.2009 Ex Pw-1/5 had informed the counsel for the plaintiff regarding investment of Rs.48.5 lacs by defendant no. 1 pursuant to the contract dated 18.05.2005 Ex Pw-1/4. Both the Ex.Pw-1/4 and EX Pw-1/5 have been proved on record in this case. It has also come in the evidence of DW-1 Suresh Chanchal that his income from the proprietor-ship firm M/s A.R. Exporters was to the tune of Rs.1.5 lacs per annum until 2005. He has further deposed on oath in his cross-examination that the said income was hardly sufficient for the subsistence of his family which had five daughters and one son apart from himself and his wife. Therefore, Suresh Chanchal, defendant no. 2 was only having an income of Rs.1.5 lacs per annum which was not even sufficient for the maintenance of his own family. Therefore, there was no question for defendant, Suresh Chanchal having any savings to the tune of Rs.48.5 lacs which could have been invested with M.s A.K. Electrical. The defendant, Suresh Chanchal has not brought on record anything to show the source of

investment of such a huge amount of Rs.48.5 lacs with M/s A.K. Electricals which was disproportionate to his known sources of income. Apart from plaintiff, Pw-2 and Pw-3 have also deposed on oath that they have invested Rs.1,000/- per month with defendant, Suresh Chanchal under his Adarsh Lucky scheme. Therefore in the light of evidence of Pw-1, PW-2 and Pw-3 and having regard to the fact that defendant Suresh Chanchal has not been able to prove the investment to be the tune of Rs.48.5 lacs with M/s A.K. Electricals and having regard to the income of defendant Suresh Chanchal during the period when the lucky draws scheme were in operation, it is proved that the amount of Rs.48.5 lacs invested by the defendants, Suresh Chanchal, came from the members of various lucky draws schemes being run by him. The deposition made by the plaintiff, PW-2 & PW-3 in this case is more believable with regard to plaintiff depositing Rs.1,000/- per month with the Suresh Chanchal vis-à-vis deposition made by Suresh Chanchal that no such amount was deposited with him. It has been noticed that deposition made by Suresh Chanchal that he was not proprietor of M/s Adarsh Lucky Scheme and is not running any lucky draws schemes have been proved to be false. Therefore, the testimony of DW-1 Suresh Chanchal that no such amount was received by him can not be believed. Therefore, it is proved on record that plaintiff had paid to the defendant, Suresh Chanchal an amount of Rs.1,000/- per month from 11.03.2006 till 15.04.2008 amounting to Rs.26,000/-." (underlining added)

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

4. It is clear from paras 15 and 16 of the judgment of the trial court that the Adarsh Lucky Scheme was found to have been propounded by the appellant and in which the respondent no.1/plaintiff deposited a sum of Rs.1,000/- per month without any receipt. The only proof of deposit was that the amount was deposited in the bank account of the wife of the appellant, and who was the defendant no. 2 in the suit, but a copy of this bank account was deliberately not filed by the defendants and hence adverse inference was drawn against the

defendants by the courts below. I do not find any illegality or perversity in the conclusions of the courts below, in this regard of the respondent no.1/plaintiff having deposited a sum of Rs.26,000/- in the Adarsh Lucky Scheme of the defendants, including the appellant. Appraisal of evidence and arriving at conclusions is in the realm of the jurisdiction of the courts below, and once there is no perversity or gross illegality, no substantial question of law arises for this Court to interfere under Section 100 CPC.

5. I may also note that the fact that the appellant/defendant no. 1 was the owner of the Adarsh Lucky Scheme was the subject-matter of issue no. 1 in the trial court and this aspect has been held in favour of the respondent no. 1/plaintiff in terms of para 8 of the judgment of the trial court and which reads as under:-

> "8. My findings on the issues are as follows:-
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> **(i) <u>ISSUE NO: 1</u>**
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> **Whether the defendants were running/dealing with the business of lucky draw under the name and style of M/s Adarsh Lucky Scheme and M/s Adarsh Thrift and Credit Society? OPP**
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> The onus to prove this issue was upon the plaintiff. Plaintiff as Pw-1 has deposed on oath that defendant no. 1 is the proprietor of M/s Adarsh Lucky Scheme and defendant no. 2 & defendant no. 3 were also associated in the lucky draw business. PW-2 & PW-3 have also corroborated the testimony of Pw-1 that defendant no. 1 was the proprietor of M/s Adarsh Lucky scheme and the same was being run with the association of defendant no. 2 & defendant no. 3. <u>To prove that defendant no. 1 was proprietor of M/s Adarsh Lucky scheme, the plaintiff has filed on record two membership cards pertaining to M/s Adarsh Lucky scheme of 2006 which are exhibited as Ex Pw-1/2 and Ex Pw-1/3. It is further deposed by the plaintiff that the signatures appearing at point C & D on Ex Pw-1/2 & Ex Pw-1/3 respectively pertains to defendant no.</u>

1. The signature of defendant no. 1 at point C & D on Ex Pw-1/2 and Ex Pw-1/3 have also been identified by Pw-2 and Pw-3. Although defendant no. 1 has denied his signatures at point C & D on Ex Pw-1/2 and Ex Pw-1/3 respectively but the document Ex. DW-1/P8 proves beyond reasonable doubt that defendant no. 1 was the proprietor of M/s Adarsh Lucky scheme and he had signed the Ex.PW1/2 and Ex.PW1/3. The plaintiff in the cross-examination of DW-1, Suresh Chanchal, who is defendant no. 1 in this case, had put a written statement filed by defendant no. 1 in suit in 87/09 which is Ex DW-1/P8. Alongwith the said suit, there is an affidavit of DW-1 wherein it is mentioned by the defendant no. 1 that he is proprietor of M/s Adarsh Lucky Scheme. The said documents Ex.DW1/P8 has been admitted by defendant no. 1 in his cross-examination. Therefore in the light of the evidence of Pw-1, Pw-2 & Pw-3 that defendant no. 1 is proprietor of M/s Adarsh Lucky Schme and having regard to the documents Ex DW-1/P8 it is proved on record that defendant no. 1 was proprietor of M/s Adarsh Lucky scheme."

(underlining added)

6. I completely agree with the aforesaid conclusions of the trial court, and as upheld by the first appellate court, that the appellant was found to be the propounder of Adarsh Lucky Scheme as this is proved by his signatures at points 'C' and 'D' on the documents Ex.PW1/2 and PW1/3. Ex.PW1/2 and Ex.PW1/3 are the membership cards pertaining to Adarsh Lucky Scheme. The fact that the appellant was the proprietor of Adarsh Lucky Scheme is also clear from Ex.DW1/P8 and which was the written statement filed by the present appellant in another suit and which was supported by the affidavit of the present appellant that he is proprietor of the Adarsh Lucky Draw Scheme.

7. Learned counsel for the appellant argues that the appellant had amended his written statement in the earlier suit as also the

affidavit in support thereto and therefore such admission cannot be considered against the appellant, and to which argument even if this Court agrees, it is found that in any case the appellant is found to have signed the membership cards and which were proved on record as Ex.PW1/2 and Ex.PW1/3, and finding with respect to which has been rightly affirmed by the first appellant court as per paras 15 to 19 of its judgment and which read as under:-

> "15. The only two points raised and agitated on behalf of the appellant are; (i) that the documents Ex.PW1/2 and Ex.PW1/3 have been wrongly held to be bearing the initials of the appellant and making the appellant proprietor of M/s Adarsh Lucky Scheme and (ii) that there was no evidence on record to show that the respondent no. 1 had been investing money with the appellant in any scheme.
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> 16. All the three witnesses i.e. PW1, PW2 and PW3 have deposed that the appellant (defendant no. 1) was the proprietor of M/s Adarsh Lucky Scheme. PW1 has further deposed that the appellant signed the membership cards Ex.PW1/2 and Ex.PW1/3 in his presence and he also identified the signatures of appellant on the same at point 'C' and 'D'. The signatures of the appellant at point 'C' and 'D' on Ex.PW1/2 and PW1/3 has also been identified by PW2 and PW3. It is true that the appellant has denied his signatures at point 'C' and 'D' on these cards Ex.PW1/2 and Ex.PW1/3. However, at the same time, he has admitted in his cross examination that Ex.DW1/P8 is the certified copy of the written statement filed by him in suit No. 87/2009 and Ex.DW1/P9 is the certified copy of his affidavit accompanying the said written statement. In this affidavit, the appellant has very clearly described himself the proprietor of M/s Adarsh Lucky Scheme.
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> 17. It was vehemently argued by learned counsel for the appellant that the mentioning of appellant as proprietor of M/s Adarsh Lucky Scheme in the aforesaid affidavit ExDW1/P9 is only on account of a typographical mistake and, therefore, same should not have been taken into consideration by the trial court. The argument has been noted only to be rejected. Nothing has been brought on record by the appellant to show that he had filed any application in the said suit no. 87/2009 seeking rectification of his description in the affidavit Ex.DW1/P9 or seeking permission to file a fresh affidavit. Further it is beyond any stretch of imagination to think that the typist who had typed the affidavit ExDW1/P9, would on his own show the appellant as the proprietor of M/s Adarsh Lucky Scheme if he had not been told to type so. The typist always type the particulars in the affidavit as are told to him. How could the typist type anything that is not dictated to him?

Further, it is not the case of the appellant that the typist has copied it from some other document and even if it is so, it implies that the appellant has mentioned himself in some other document also as proprietor of M/s Adarsh Lucky Scheme, which he would not have done if he was not the proprietor of M/s Adarsh Lucky Scheme in fact.

18. There is nothing in the cross examination of PW2 and PW3 to disbelieve their testimony regarding identification of the signatures of the appellant at point 'C' and 'D' on Ex.PW1/2 and Ex.PW1/3. Learned counsel for the appellant has failed to give any cogent explanation as to why would these two witnesses depose falsely against the appellant.

19. Therefore, the trial court has rightly held that the appellant was the proprietor of M/s Adarsh Lucky Scheme of the year 2006 and its judgment in this regard cannot be faulted with." (underlining added)

8. It has to be accordingly held that as per the appraisal of evidence done by the courts below including deposition of as many as three witnesses with the documentary evidence, it is the appellant who was the owner of the Adarsh Lucky Scheme, and in my opinion, such finding and conclusion does not raise any substantial question of law for this regular second appeal to be entertained under Section 100 CPC.

9. Dismissed.

MAY 12, 2017 **VALMIKI J. MEHTA, J**

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