* IN THE HIGH COURT OF DELHI AT NEW DELHI

\+ **RFA No. 615/2017**

% **14th July, 2017**

SUMAN TIWARI & ANR. ..... Appellants
Through: Mr. Shashi Shukla, Adv.

versus

SATISH KUMAR BANSAL ..... Respondent

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

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. This Regular First Appeal under Section 96 of the Code of Civil Procedure, 1908 (CPC) is filed by the defendant in the suit impugning the judgment of the trial court dated 10.3.2017 decreeing the suit filed by the respondent/plaintiff for a sum of Rs.8,70,000/- along with interest at 8% per annum.

2. The subject suit was filed by the respondent/plaintiff pleading that he had given on 28.5.2012 a loan of Rs.1 lac to the appellants/defendants against receipt. It is further pleaded on 25.9.2012, 1.10.2012, 10.1.2013 and 17.2.2013 at the request of the

appellants/defendants once again the respondent/plaintiff gave loans of Rs.70,000/-, Rs.3,00,000/-, Rs.2,50,000/- and Rs.1,50,000/- against receipts. Total loan amount is said to be Rs. 8,70,000/-. Since the appellants/defendants failed to pay the loan amount a legal notice dated 25.3.2014 was sent through registered AD, which inspite of service since failed to yield the desired result, the subject suit was hence filed.

3. Appellants/defendants in the written statement pleaded that they never received any loan of Rs.8,70,000/- from the respondent/plaintiff, but they had only taken a loan of Rs.1 lac from the respondent/plaintiff on 28.5.2012. It was pleaded that the respondent/plaintiff at the time of obtaining of loan obtained signatures of the appellants/defendants on blank papers. It is further pleaded that appellants/defendants had already repaid the loan taken of Rs.1 lac and at the time of return of the loan respondent/plaintiff stated that receipts were lost and hence they could not be returned. The suit was accordingly prayed to be dismissed. It was also pleaded that appellant no.2/defendant no.2 was only an auto rickshaw driver, and therefore, there was no reason why such a huge amount of

Rs.8,70,000/- would have been taken by the appellants/defendants from the respondent/plaintiff.

4. After pleadings were complete the trial court framed the following issues:-

> *"Issue No.1. Whether plaintiff is entitled for recovery of amount of Rs.8,70,000/- as prayed? OPP.*
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> *Issue No.2. Whether plaintiff is entitled for interest, if yes, at what rate? OPP.*
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> *Issue No.3. Relief."*

5. Evidence led by the appellants/defendants and respondent/plaintiff is referred to in paras 6 to 8 of the judgment of the trial court and which paras read as under:-

> **"Plaintiff's Evidence**
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> 6. In order to prove his case, plaintiff has examined himself as PW-1 and filed his evidence by way of affidavit wherein he reiterated the contents of the plaint on oath. The plaintiff has relied upon the Original Loan receipt dated 28.05.2012 as Ex.PW1/1, the Original receipt dated 25.09.2012 as Ex.PW-1/2, receipt dated 09.10.2012 as Ex.PW1/3, Ex.PW1/5 is receipt dated 10.01.2013, Ex.PW1/6 is receipt dated 17.02.2013, Legal demand notice dated 25.03.2014 a Ex.PW-1/7, the postal receipts dated 25.03.2014 as Ex.PW1/8 and Ex.PW1/9 and AD cards as Ex.PW-1/10 and Ex.PW-1/11. PW-1 was cross-examined on behalf of the defendants and discharged.
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> 7. Plaintiff also examined PW-2 Sh. Atul Kumar and PW-3 Sh. Manish Bansal in support of his case. Both the PW-2 and PW-3 filed their affidavit in examination-in-chief. Both the said PWs have deposed that the loan amount was given to the defendant on various occasions in their presence. Both the said witnesses have identified the receipts issued as acknowledgment for the payment of the loan amount. Both were cross-examined on behalf of the defendants and discharged. Thereafter, PE was closed.
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> **Defendant's Evidence**

> 8. In order to prove their case, both the defendants have examined themselves as DW-1 and DW-2. They tendered their affidavit in evidence as Ex.DW1/A and Ex.DW2/A wherein they have reiterated and reasserted the contents of the written statement on oath. Both the DW-1 and DW-2 were cross-examined on behalf of the plaintiff and discharged. Thereafter DE was closed."

6. The only issue which requires consideration by this Court was the subject matter of issue no.1 as to whether the appellants/defendants had taken a loan of Rs.8,70,000/- from the respondent/plaintiff. Appellants/defendants did not deny their signatures on the receipts Ex.PW1/1 to Ex.PW1/6 but pleaded that they had taken a loan of Rs.1 lac which was repaid back. Appellants/defendants also pleaded that at the time of returning of the loan they were told by the respondent/plaintiff that the original receipts were destroyed. Trial court has held that even assuming the receipts were destroyed the appellants/defendants could have surely asked for fresh receipts from the respondent/plaintiff acknowledging repayment of the loan, but the same was not done by the appellants/defendants. Trial court has also rightly held that appellants/defendants received the legal notice but did not sent any reply to the same showing that they accepted the contents of the legal notice dated 25.3.2014 Ex.PW1/7. Trial court has also rightly held

that if receipts were misused by the respondent/plaintiff then there was no reason for the appellants/defendants to remain silent and not file any police complaint. Trial court has further held that the purpose of loan is stated in the receipts which showed that appellants/defendants had taken a loan for the business of their two sons. Accordingly, the trial court held issue no.1 against the appellants/defendants that appellants/defendants did take loans totaling to Rs.8,70,000/- from the respondent/plaintiff. The relevant observations of the trial court in this regard are contained in paras 16 to 20 and which read as under:-

> "16. The fact that both the parties are known to each other is not disputed. It is also not disputed that the defendant used to take the loan from the plaintiff as both the defendants themselves have stated that they have taken a loan of Rs.1 Lacs from the plaintiff. The only contention raised by the defendants is that the loan amount was Rs. 1 Lac only and not Rs.8,70,000/- and also that said loan amount has already been repaid. DW-1 and DW-2 have admitted that receipts Ex.PW1/1, Ex.PW1/2, Ex.PW1/3, Ex.PW1/5 and Ex.PW1/6 bears their signatures. However it is stated by the defendants that the contents of the receipts were later on written by the plaintiff. As per the case of the defendant, loan amount of Rs. 1 Lac has been repaid. It is stated by the defendant that they asked for return of receipts at the time of return of the loan amount but they were told that the receipts were lost. Even if the receipts were lost then also any prudent person while returning the loan amount will ask for fresh receipts. It is nowhere mentioned by the defendants that they have asked for the fresh receipts from the plaintiff acknowledging repayment of loan but the same was not issued by the plaintiff.
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> 17. Further defendants has stated that the signatures were taken on the blank papers and the receipts were manipulated by the plaintiff why no complaint was made to the police has not been explained by the defendants. Both the defendants have admitted that they have received a legal notice and when they received a legal notice, it is clear that they were having knowledge that the receipts have been misused by the plaintiff and at that

time also they remained silent and did not make any complaint to the police. Even the reply to the legal notice has not been given by the plaintiff.

18. DW-1 and DW-2 has stated in their cross-examination that they have instructed their counsel to file the reply to the legal notice but the same was not done by the counsel. If that was the case why another counsel was not engaged to sent the reply to the legal notice has not been explained.

19. As per provisions of section 103 of the Indian Evidence Act held that a party who alleges a fact has to prove the same. In the present case, the plaintiff has relied on the receipts Ex.PW1/1, Ex.PW1/2, Ex.PW1/3, Ex.PW1/5 and Ex.PW1/6 as the proof that the loan was granted to the defendants. The said receipts have been proved by the testimony of the plaintiff as PW-1. Both the defendants have admitted their signatures on the receipts Ex.PW1/1, Ex.PW1/2, Ex.PW1/3, Ex.PW1/5 and Ex.PW1/6 but stated that the contents of the receipts were subsequently filled by the plaintiff. When the defendants are denying the correctness of receipt, onus was upon the defendant to prove the same. Defendants have stated that they had signed the receipts. Ex.PW1/1, Ex.PW1/2, Ex.PW1/3, Ex.PW1/5 and Ex.PW1/6 in presence of two witnesses but no efforts have been made by the defendants to examine the said witness in the court. Neither defendants have led any other evidence such as comparison of the handwriting by the handwriting expert to prove that the receipts Ex.PW1/1, Ex.PW1/2, Ex.PW1/3, Ex.PW1/5 and Ex.PW1/6 were falsely prepared by the plaintiff.

20. Another contention raised by the counsel for the defendant is that the defendant did not have any purpose for taking loan. However receipts clearly shows that the loan was taken for the business of the son of the defendants. DW-1 and DW-2 have admitted in their cross-examination that they have two sons. It is also admitted by the defendants that they have taken a sum of Rs.1 Lac by the plaintiff as loan. Both the said evidence corroborates the fact that the defendant were in need of money and hence has taken a loan from the plaintiff. As already discussed, the onus was upon the defendant to prove that the loan amount was Rs. 1 Lac only which has been already repaid. Defendants have examined only themselves to prove the said contention which is only oral testimony. On the other hand plaintiff has proved his averments by placing on record receipts Ex.PW1/1, ExPW1/2, Ex.PW1/3, Ex.PW1/5 and Ex.PW1/6. Hence, the plaintiff has proved the fact that the loan was advanced as stated by preponderance of probabilities and the present issue is decided in favour of the plaintiff and against the defendant." (underlining added)

7. I completely agree with the findings and conclusions of the court below inasmuch as appellants/defendants have not disputed

their signatures on the receipts and it is not believable that if the loan was for Rs.1 lac and the same was returned then the appellants/defendants would not have taken back the original receipts or in any case not taken a fresh acknowledgment/receipt that the loan stood repaid. Also, the appellants/defendants did not reply to the legal notice and accordingly, a presumption had to be drawn against them with respect to the factual contents of the legal notice. Trial court has granted relief to the appellants/defendants to the extent available in law by reducing the rate of interest from 24% as claimed to 8% per annum.

8. This Court can interfere with the findings and conclusions of the trial court if the findings and conclusions are either perverse or illegal. Once there are two views which arise from the evidence which is found in the record of the trial court, then the trial court is entitled to arrive at one possible and plausible conclusion, and in which case this Court will not interfere.

9. In view of the above, I do not find any merit in this Regular First Appeal. Dismissed.

JULY 14, 2017/ib **VALMIKI J. MEHTA, J**