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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CM(M) 779/2017 & CM No.26263/2017 (for stay)
SANDEEP MORIA Petitioner

Through: Mr. Aman Mehta, Adv.

Versus

NARESH GARG Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **26.07.2017**

1. This petition under Article 227 of the Constitution of India impugns the order (dated 8th May, 2017 in Civil Suit No.40/2014 of the Court of Additional District Judge (ADJ)-02, North District, Rohini Courts, Delhi filed by the respondent/plaintiff against the petitioner/defendant for recovery of money) of dismissal of the application of the petitioner/defendant under order Rule XII Rule 6 of the CPC for dismissal of the suit, filed at the stage of cross examination of the respondent/plaintiff, and on the basis of the statements made by the respondent/plaintiff in the cross examination.
2. The gist of the controversy is that the respondent No.1/plaintiff instituted the suit pleading that a sum of Rs.14 lacs had been transferred to the petitioner/defendant by Real Time Gross Settlement (RTGS) while the parties were exploring some commercial transaction but which never fructified and hence the respondent/plaintiff was entitled to recover back the said amount.
3. Though the counsel for the petitioner/defendant has not filed his written statement before this Court but on enquiry states that the defence of

the petitioner / defendant to the suit is of having sold and supplied goods to the respondent/plaintiff for which the said money transfer had been received.

4. The respondent/plaintiff however in his cross-examination by the counsel for the petitioner/defendant denied that there were any friendly relations with the petitioner/defendant or that the amount of Rs.14 lacs was transferred to the petitioner/defendant for the reasons pleaded in the plaint but stated that the said transfer was on account of loan and also stated that in fact he had given loan of much more than Rs.14 lacs.

6. Contending that the stand of the respondent/plaintiff in cross-examination was contrary to that in the plaint, the application for dismissal of suit on admissions was filed.

7. I have drawn the attention on the counsel for the petitioner/defendant to Order VII Rule 7 of the CPC which empowers the Court to mould the relief once found to be due to a party which has gone to trial before it. Applying the said provision, it has been held in ***Srinivas Ram Kumar Vs. Mahabir Prasad*** AIR 1951 SC 177 that though it was not case in the plaint that money was advanced by way of loan and the plaintiff had approached the Court with the specific case of the money having been paid in pursuance of contract of sale and which could not be established by evidence, since the plaintiff could have made an alternative case of the money having been advanced as loan, even in the absence of such alternative case having been made in the plaint, there would be nothing improper in giving plaintiff a decree upon the case as has emerged. It was reasoned that when no injustice could possibly result to the defendant, it may not be proper to drive the plaintiff to a separate suit. Reliance was placed on ***Babu Raja Mohan***

Manucha Vs. Babu Manzoor* AIR 1943 PC 29** holding that even where the suit was to enforce the mortgage security and the defence of the defendant was that the mortgage was void and which defence had succeeded, it is always open to the Court to grant relief to plaintiff in form of restitution under section 65 of the Indian Contract Act, 1872 even if there is no such alternative claim in the plaint and accordingly relief was granted reasoning that the defendant could not be prejudiced by such a claim at all and the matter ought not to be left to a separate suit. Reference in this regard may also be made to (i) ***Sangeeta Chaturvedi Vs. Manoj Chaturvedi 2016 SCC OnLine Del 3489; (ii) ***Nabha Investment Pvt. Ltd. Vs. Harmishan Dass Lukhmi Dass*** (1995) 33 DRJ 496; (iii) ***Jinesh Kumar Jain Vs. Iris Paintal*** ILR (2012) V Del 678; (iv) ***Ramchandra Lalbhai Vs. Chinubhai Lalbhai*** AIR 1944 Bom 76; (v) ***V. Kamalaksha Pai Vs. Keshava Bhatta*** AIR 1972 Ker 110; (vi) ***Mahabir Ram Vs. Sita Devi*** AIR 1977 Pat 161; and, (vii) ***Sudarshan Trading Company Limited, Bangalore Vs. L. D'Souza*** AIR 1984 Kar 214 (DB).

8. I have rather enquired from the counsel for the petitioner/defendant about the issues in the suit.

9. However neither copy of the issues has been filed nor it is available in the file of the counsel for the petitioner / defendant.

10. I am intrigued that in the aforesaid state of affairs, it is the respondent / plaintiff who is leading the evidence. It appears that since the petitioner / defendant admits receipt of monies and has pleaded consideration therefor, the petitioner / defendant ought to have led evidence first.

11. However that is not the subject matter of this petition and though this Court in exercise of supervisory jurisdiction is entitled to interfere, but I am not choosing to do so.

12. The counsel for the petitioner / defendant states that he is also aware of a judgment which says that relief can be given only on the basis of which is claimed and not on any other basis. He is however not carrying the said judgment.

13. In view of the aforesaid discussion and the state of affairs, no ground for interference with the order impugned is made out.

Dismissed.

No costs.

RAJIV SAHAI ENDLAW, J

JULY 26, 2017

‘gsr’..