

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

+ **RFA No. 735/2017**
RFA No. 736/2017

% **Reserved on: 26th September, 2017**
Pronounced on: 9th October, 2017

+ **RFA No. 735/2017 and C.M. Appl. Nos. 29740-42/2017**

HARI SINGH Appellant

Through: Mr. Gurmeet Singh, Advocate.

versus

PREM SINGH Respondent

+ **RFA No. 736/2017 and C.M. Appl. Nos. 29745-47/2017**

AKHILESH SINGH Appellant

Through: Mr. Gurmeet Singh, Advocate.

versus

PREM SINGH Respondent

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J

1. Two Regular First Appeals under Section 96 of the Code of Civil Procedure, 1908 (CPC) are being disposed of by this common judgment. The impugned judgments of the trial court are dated 10.6.2016 (RFA No.735/2017) and 12.7.2016 (RFA No. 736/2017) by

which the leave to defendant applications under Order XXXVII Rule 3(5) CPC of the appellants have been dismissed and the money recovery suits for Rs.6,80,000/- and Rs.5,50,000/- have been decreed in favour of the respondent/plaintiff with interest at the rate of 10% per annum.

2. The facts of the case are that the appellants approached the respondent/plaintiff for friendly loans. Appellants are husband and wife. To the husband (appellant in RFA No. 735/2017) respondent/plaintiff granted a friendly loan of Rs.1.3 lacs in August, 2008 by means of the following cheques:-

S. No.	Ch. No	Dated	Amount	Drawee Bank
1.	313915	06.08.2008	40,000.00	SCB Bank
2.	114917	07.08.2008	62,000.00	ABN AMRO Bank
3.	469412	07.08.2008	28,000.00	HSBC Bank

3. Respondent/plaintiff again was requested to give a loan of Rs.4,00,000/- for urgent requirement of cash of the appellant's family and therefore the respondent/plaintiff gave a sum of Rs.3,50,000/- in cash as a loan to the husband on 25.12.2008 and it was assured that this loan along with interest totaling to Rs.4,80,000/- would be returned by the end of March, 2010.

4. Instead of discharging the liability towards loan and interest, the appellant/husband again approached the respondent/plaintiff in the month of January, 2010 and requested for further loan of Rs.3,00,000/- stating that the entire amount of Rs.6,80,000/- would be returned by the end of March, 2010. Respondent/plaintiff therefore gave a sum of Rs.70,000/- by cheque bearing no. 114348 to the appellant/husband and a sum of Rs.1,30,000/- was given in cash to the appellant/husband on 25.2.2010.

5. When the respondent/plaintiff demanded a sum of Rs.6,80,000/-, the appellant/husband stated that they were having financial difficulties and did not return the amount, and instead the wife (appellant in RFA No. 736/2017), who is a government servant approached the respondent/plaintiff and stated that if the respondent/plaintiff would arrange for a further loan of sum of Rs.4 to 5 lacs, then, the entire amount of loan would be positively returned to the respondent/plaintiff. To confirm the loan amounts already granted, an agreement dated 31.10.2011 was signed by the appellants in the presence of the marginal witnesses. The husband for repayment of the loan issued a post dated cheque bearing no. 000109 dated 20.11.2012

for a sum of Rs.6,80,000/-, and the wife for repayment of the loan issued four post dated cheques being cheque bearing no. 436441 for a sum of Rs.2,00,000/- dated 10.11.2012, cheque bearing no. 436442 for a sum of Rs.1,00,000/- dated 25.11.2012, cheque bearing no. 436443 for a sum of Rs.1,00,000/- dated 30.11.2012 and lastly a cheque bearing no. 000007 for a sum of Rs.1,50,000/- dated 30.11.2012. Appellants did not repay the loan amount and when the respondent/plaintiff deposited the aforesaid cheques in the banks of the appellants the same were returned with the memos dated 17.12.2012 and 19.12.2012 with the remarks 'stop payment'. Respondent/plaintiff, therefore, served legal notice dated 12.1.2003 and thereafter filed the subject suit under Order XXXVII CPC.

6. It is seen that in the leave to defend application which is filed by the appellants the factum with respect to the appellants receiving the loan amount by cheques is not disputed. The factum with respect to payments of loan amount in cash gets confirmed from the agreement dated 31.10.2011 signed by the appellants in the presence of marginal witnesses. Appellants also did not dispute that the cheques were issued by them for a sum of Rs.6,80,000/- so far as the husband is concerned and four different cheques totaling to

Rs.5,50,000/- being issued by the wife. The fact that the cheques have been dishonoured is also not a disputed fact. In view of these facts, in my opinion, the trial court has rightly dismissed the leave to defend application and decreed the suit for recovery of moneys.

7.(i) Learned counsel for the appellants argued that it is inconceivable that the further loan amount of Rs.4,00,000/- was given to the wife by the respondent/plaintiff pledging his own gold with M/s Muthoot Finance Limited, however, in my opinion, even if the story set up by the respondent/plaintiff of how he arranged the loan is not correct, however, this Court cannot ignore the fact that there is no denial by the appellants of their having signed the agreement dated 31.10.2011 acknowledging the loan amounts. This agreement is not disputed by the appellants in their leave to defend application and I cannot agree with the argument urged on behalf of the appellants that para 20 of the affidavit in support of the leave to defend application will amount to an averment that the agreement dated 31.10.2011 was a forged and fabricated document. Para 20 of the affidavit in support of the leave to defend application reads as under:-

“20. That it is pertinent to mention here in that the Defendant will prove in evidence that the said documents including the cheques promissory notes, stamp paper etc. are infact forged and fabricated documents and therefore the present suit ought to be dismissed barred by law.”

(ii) A reference to the aforesaid para 20 of the affidavit in support of the leave to defend application shows that there is no specific denial of the appellants having signed the agreement dated 31.10.2011. General statements of denial as made in para 20 cannot be a basis for grant of leave to defend as if the agreement dated 31.10.2011 is specifically pleaded to be a forged document.

8. Learned counsel for the appellants then argued that the appellants and the respondent/plaintiff are involved in over two dozen cases and with respect to which FIRs have been lodged by the appellants against the respondent/plaintiff and therefore appellants should be given an opportunity to prove their case, however, in view of the fact that it is not disputed that the appellants received the loans, appellants signed the agreement dated 31.10.2011 and the appellants had issued the cheques which were dishonored, in my opinion, no grounds are made out for leave to defend in the facts of the present cases.

9. There is no merit in the appeals and the same are hereby dismissed.

OCTOBER 09, 2017/ AK

VALMIKI J. MEHTA, J