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

\+ RFA(OS) 2/2017

DINESH SEHGAL & ORS

..... Appellants

Represented by: Mr.Rajiv Dutta, Sr. Adv. instructed by Mr.Mukul Lather, Adv.

versus

CHANDEEP SINGH BHATIA

..... Respondent

Represented by: Mr.Sandeep P.Agarwal and Mr.Rajesh Pathak, Advs.

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MR. JUSTICE YOGESH KHANNA

O R D E R

% **21.02.2017**

1. Heard learned counsel for the parties.

2. Challenge in the appeal is to an order dated October 7, 2016 dismissing IA No.7904/2016 filed by the appellants seeking leave to defend the suit filed by the respondent.

3. Seeking decree in sum of ₹2,42,58,812/- case pleaded by the respondent was that he sold jewellery worth ₹2,01,25,000/- to appellant

No.1. A Purchase Agreement of even date : July 16, 2014 was executed in writing. Appellant No.1 acknowledged having received the jewellery as per the Agreement. Appellants No.2 to 4 extended personal guarantee for paying the amount of the jewellery which was sold. As per the plaint the agreement was that the price of the jewellery shall be paid within one year in instalments with interest @ 1.5% per month to be paid on the outstanding amount. To pay the price of the jewellery, four post-dated cheques, three in sum of ₹50 lakhs each and the fourth in sum of ₹51.25 lakhs; dated 15.10.2014, 15.01.2015, 15.04.2015 and 15.07.2015 were issued by appellant No.1. The cheques were drawn on the account of appellant No.1 maintained with Jammu & Kashmir Bank Ltd., Branch South Extension-Part-II. 12 post-dated cheques for the interest payable commencing from December, 15, 2014 till July 15, 2015 were also issued by appellant No.1. By a letter dated July 16, 2014 the appellant No.1 acknowledged and confirmed receipts of the jewellery.

4. Pleading that the cheque dated October, 15, 2014 to repay part principal amount in sum of ₹5 lakhs was dishonoured and so were the post-dated cheques payable in the month of December, 2014, the suit was filed informing the Court that the plaintiff has taken resort to proceedings under Section 138 of the Negotiable Instruments Act, 1881.

5. Seeking leave to defend, the appellants admitted having executed the writings dated July 16, 2014. Issuance of the cheques referred to in the claim was also admitted. Purchase of jewellery was denied. As per the appellants, appellant No.1 was a tenant under the respondent for long in the past.

They had good relationship. Appellant No.1 needed money. The respondent agreed to advance the loan. The agreement and the letter, both dated July 16, 2014, were signed under pressure (and by that we understand to mean that the respondent took advantage of the commercial hardship of the appellant No.1). It was pleaded that the respondent never advanced the loan amount. In other words the defence projected was that the Agreement was a sham document.

6. Vide impugned order, the learned Single Judge has noted the case law on the approach to be followed by the Court when confronted with an application seeking leave to defend in a civil suit.

7. The reasoning of the learned Single Judge is that if the appellants, as stated by them, were forced and coerced to sign the Purchase Agreement, they would have certainly protested.

8. The reasoning by the learned Single Judge appears to be influenced by the wrong expression used in the application seeking leave to defend, for the reason meaningfully read, the case of the appellants is not that they were forced or coerced to sign any document. They plead that the respondent took advantage of their commercial hardship.

9. We therefore proceed to look at the defence as understood hereinabove.

10. If what the appellants state is correct, the conduct would have been to write letters to the respondent informing the respondent that having been required to execute the Agreement and the letter as collateral documents for the loan, the loan should be disbursed. After all, the case of the appellants is

that appellant No.1 needed the money urgently. If this was so, the normal conduct of the appellant No.1 would have been to write a letter immediately after having signed the documents for the loan to be disbursed. Appellant No.1 has not pleaded having written any letter to the respondent or having ever contacted the respondent for the loan to be disbursed. When the cheques were returned dishonoured by the bank on which they were withdrawn with the remarks '*insufficient funds*', notices sent by the respondent under Section 138 of the N.I.Act were not responded to.

11. This is the reason on which we hold that the defence raised is a moon-shine. The appellants would not be entitled to the grant of leave to defend the suit.

12. The appeal is dismissed but without any order as to costs.

<u>CM No.529/2017</u>

Dismissed as infructuous.

PRADEEP NANDRAJOG, J

YOGESH KHANNA, J

FEBRUARY 21, 2017
VLD