*   IN THE HIGH COURT OF DELHI AT NEW DELHI

+ **RFA No.981/2017**

% **24th November, 2017**

RAVINDER AHLUWALIA ..... Appellant

Through: Mr. Naresh K. Daksh, Advocate.

versus

M.L. SHARMA ..... Respondent

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

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

C.M. No.42741/2017 (exemption)

1. Exemption allowed subject to just exceptions.

C.M. stands disposed of.

C.M. No.42742/2017 (for condonation of delay)

2. For the reasons stated in the application, delay of 129 days in filing the appeal is condoned.

C.M. stands disposed of.

RFA No.981/2017 and C.M. No.42743/2017 (stay)

3. This Regular First Appeal is filed under Section 96 of Code of Civil Procedure, 1908 (CPC) impugning the judgment of the

Trial Court dated 24.3.2017 by which the trial court has dismissed the leave to defend application filed by the appellant/defendant and decreed the suit for a sum of Rs.12 lacs along with interest at 9% per annum simple. The suit was filed under Order XXXVII CPC on the basis of the dishonoured cheque for an amount of Rs.12 lacs.

4. The facts of the case as pleaded by the respondent/plaintiff are that the respondent/plaintiff gave a loan of Rs.10 lacs to the appellant/defendant in terms of cheque no.058063 drawn on State Bank of India, Greater Kailash-II Branch, New Delhi and which cheque was encashed on 10.11.2008. To secure the loan amount the appellant/defendant had executed a promissory note and receipt on 7.11.2008. The appellant/defendant further asked for a sum of Rs.2 lacs from the respondent/plaintiff and which was paid by the respondent/plaintiff to the appellant/defendant and consequently the appellant/defendant issued the subject cheque bearing no.657066 in favour of the respondent/plaintiff dated 4.3.2013 for Rs.12 lacs drawn on Vijaya Bank, Nehru Place Branch, New Delhi. However this cheque when presented was dishonoured with the remarks "account

closed" and therefore after serving the legal notice dated 30.3.2013, the subject suit under Order XXXVII CPC was filed.

5. As per the leave to defend application filed by the appellant/defendant it was pleaded that no loan was taken of Rs.10 lacs originally and nor was the impugned cheque given to the respondent/plaintiff by the appellant/defendant. Appellant/defendant pleaded that he had handed over 20 blank cheques to one Sh. Siddharth Sapra for seeking a loan of Rs.1 lakh without mentioning the date/name/amount in the cheques but the said Sh. Siddharth Sapra never disbursed any amount to the appellant/defendant. It was pleaded that Sh. Siddharth Sapra had filed a complaint under Section 138 of the Negotiable Instruments Act, 1881 which is pending before the court of concerned MM. It was pleaded by the appellant/defendant that the subject cheque of Rs.12 lacs was misused by the respondent/plaintiff in connivance with Sh. Siddharth Sapra. Appellant/defendant pleaded that he had repaid the loan amount of Rs. 10 lacs to the respondent/plaintiff.

6. The respondent/plaintiff in the reply to leave to defend application pleaded that defence is moonshine because the defence

raised by the appellant/defendant is not corroborated by even a single document. The story propounded by the appellant/defendant of the cheques being given to Sh. Siddharth Sapra which was allegedly misused by the respondent/plaintiff was denied.

7. Three issues arose as per the leave to defend application and which are reproduced by the trial court in para 10 of the impugned judgment as under:-

> "(i) the claim of the plaintiff is time barred as is evident from the own admission of the plaintiff that the loan was granted in the year 2008.
>
> (ii) the cheque which has been used by plaintiff has never been issued by the defendant in acknowledgement of any debt.
>
> (iii) since there is no written contract between the plaintiff and defendant hence the suit is not covered under any Clause of Order 37 CPC."

8. All these aforesaid three aspects were held in favour of the respondent/plaintiff holding that the subject suit is rightly filed under Order XXXVII CPC as it was based on a dishonoured cheque and that since the cheque was dishonoured on 6.3.2013 therefore the subject suit which was filed on 3.6.2015 was within limitation period of three years. Trial court held that the defence was moonshine and the subject cheque was issued by the appellant/defendant to the respondent/plaintiff. Trial court has adverted to the fact that the

appellant/defendant has not denied that his signatures existed on the promissory note and the receipt dated 7.11.2008 when the loan of Rs.10 lacs was given and which loan subsequently became Rs.12 lacs and which was duly secured by the subject dishonoured cheque. Trial court has observed that the stand of the appellant/defendant having repaid the loan cannot be believed as this defence was not backed by any document and it is unbelievable that the appellant/defendant would have repaid the loan without taking any receipt.

9. I completely agree with the reasoning and conclusions of the trial court in the impugned judgment because the defence raised by the appellant/defendant was moonshine. The subject dishonoured cheque was of the appellant/defendant and the suit has been rightly held to be within limitation as it was filed on 3.6.2015 i.e within three years of the presentation of the subject cheque on 6.3.2013. Some of the relevant observations of the trial court in this regard are as under:-

> "14.1 On the other hand, Ld. Counsel for plaintiff argued that at the time of availing of loan defendant signed on receipt and promissory note dated 07.11.2008. The amount was paid through cheque no.058063 drawn on State Bank of India, Greater Kailash Part-II, New Delhi for Rs.Ten Lakh and the said cheque was encahsed by the defendant on 10.11.2008. It is further argued that defendant in the month of July, 2010 again showed his urgency and asked for another loan of Rs. Two Lakh which plaintiff advanced to the defendant. It is further argued by Ld. Counsel for plaintiff that defendant issued a cheque no.657066 for Rs.Twelve Lakh on

04.03.2013. Plaintiff deposited the cheque on 06.03.2013 when the cheque got dishonoured. It is argued by ld. Counsel for plaintiff since the cheque was deposited on 06.03.2013 which was dishonoured hence the period of limitation shall start from 06.03.2013 onwards.

14.2 I have gone through the records as well as the certified copy of documents produced on record, it is seen that the bank had returned the dishonoured cheque to the plaintiff on 06.03.2013 with cheque returning memo with remarks "account closed".

14.3 It is further seen that the present suit has been filed on 03.06.2015 and was listed before the court first time on 04.06.2015. Since plaintiff had filed the suit well within three years of the presentation/dishonor of the cheque which is period provided under Limitation act for a suit for recovery. Hence, the ground taken by the defendant is not tenable and is accordingly dismissed.

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15.2 I again gone through the record particularly with the promissory note and receipt dated 07.11.2008. Perusal of this document shows that defendant had put his signatures on the revenue stamp on receipt as well as promissory note. It is not the defence of the defendant that the signatures are forged or he has not signed the receipt of promissory note. Nowhere in the application for leave to defend, defendant has pleaded such a plea. It is further seen that defendant had not placed even a single document in support of his submission that he had repaid the loan amount received by him. It is unbelievable to the any stretch of imagination that a prudent man who had signed the receipt of loan amount as well as the promissory note will issue a blank cheque and further will return the amount without having any receipt from the lender." (underlining added)

10. In view of the aforesaid discussion, I do not find any merit in the appeal. Dismissed.

NOVEMBER 24, 2017 **VALMIKI J. MEHTA, J**

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